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## I N D E X

GOVERNMENT WITNESS:PAGE NO.

KAULANA FREITAS (CONTINUED TESTIMONY)

RESUMED CROSS-EXAMINATION BY MR. KENNEDY  
REDIRECT EXAMINATION BY MR. INCIONG  
RE CROSS-EXAMINATION BY MR. KENNEDY

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EXHIBITS:PAGE NO.

Exhibit 5004-22 was received in evidence  
Exhibit 5004-023 was received in evidence  
Exhibit 5004-024 was received in evidence  
Exhibits 5004-020 and 5004-021 were received in  
evidence  
Exhibit 5004-0294 was received in evidence  
Exhibit 5004-34 was received in evidence  
Exhibit 5004-43 was received in evidence  
Exhibit 9008-078 was received in evidence  
Exhibit 9008-80 was received in evidence  
Exhibit 9008-81 was received in evidence  
Exhibit 9008-82 was received in evidence  
Exhibit 9008-009 was received in evidence  
Exhibit 9008-083 was received in evidence  
Exhibit 9008-72 was received in evidence  
Exhibit 9008-86 was received in evidence  
Exhibit 9008-087 was received in evidence  
Exhibit 9008-088 was received in evidence  
Exhibit 9008-085 was received in evidence  
Exhibit as 9008-89A received in evidence  
Exhibits 9372-003, 9372-004 and 9372-005 were  
received in evidence  
Exhibit 9008-073 was received in evidence

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1 February 20, 2024 8:38 a.m.

08:38AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United  
08:38AM 3 States of America versus Michael J. Miske, Jr.

08:38AM 4 This case has been called for jury trial, day 23.

08:38AM 5 Counsel please make your appearances for the record.

08:38AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,  
08:38AM 7 Michael Nammar and KeAupuni Akina for the United States. Also  
08:38AM 8 present are Kari Sherman and FBI Special Agent Thomas Palmer.

08:38AM 9 THE COURT: Good morning.

08:38AM 10 MR. KENNEDY: Good morning, Your Honor. Michael  
08:38AM 11 Kennedy here with Lynn Panagakos, Michael Miske, and Ashley  
08:38AM 12 King and Josh Barry, and good morning to you.

08:38AM 13 THE COURT: Good morning to your group as well,  
08:38AM 14 Mr. Kennedy. You may seated.

08:38AM 15 Good morning to the 17 persons on our jury. Hopefully  
08:38AM 16 everyone got a chance to recharge the batteries a little bit  
08:38AM 17 over this three-day weekend and are raring to go this Tuesday  
08:38AM 18 morning. Whether you're raring to go or not, we're going.

08:38AM 19 So we're at the point of the cross-examination of  
08:39AM 20 Mr. Freitas, and Mr. Kennedy was conducting that  
08:39AM 21 cross-examination when we adjourned on Friday afternoon.

08:39AM 22 Mr. Kennedy, you may resume when you're ready.

23 MR. KENNEDY: Thank you, sir.

24 KAULANA FREITAS,

25 (Having been previously sworn, resumed the stand.)

1 RESUMED CROSS-EXAMINATION

2 BY MR. KENNEDY:

08:39AM 3 Q Sir, last week the government asked you some questions

08:39AM 4 about some exhibits and I want to bring those up for you, okay?

08:39AM 5 A Okay.

08:39AM 6 MR. KENNEDY: If we could took a look at Government

08:39AM 7 Exhibit 1-643.

08:39AM 8 BY MR. KENNEDY:

08:39AM 9 Q Do you recall some questions about 1-643?

08:39AM 10 A Yes.

08:39AM 11 Q Can we bring up Exhibit 1-644?

08:39AM 12 Do you recall some questions about 1-644?

08:39AM 13 A Yes.

08:39AM 14 Q Bring up Exhibit 1-646.

08:39AM 15 Do you recall some questions about 1-646?

08:39AM 16 A Yes.

08:40AM 17 Q And if we could bring up Exhibit 1-647.

08:40AM 18 Do you recall some questions about that?

08:40AM 19 A Yes.

08:40AM 20 MR. KENNEDY: All right. If we can publish

08:40AM 21 Exhibit 1-643 for the jury?

08:40AM 22 THE COURT: Go ahead.

08:40AM 23 MR. KENNEDY: And then Exhibit 1-644, and then

08:40AM 24 Exhibit 1-646, and then Exhibit 1-647.

08:40AM 25 BY MR. KENNEDY:

08:40AM 1 Q All right. Now as to each of these exhibits,  
08:40AM 2 Exhibit 1-643, 1-644, 1-646 and 1-647, you testified that these  
08:40AM 3 were Hawai'i Partners' Craigslist ads last week?  
08:40AM 4 A I don't believe so. This is Hawai'i Partners. I never  
08:40AM 5 posted these personally.  
08:41AM 6 Q Correct. These -- last week I asked you some questions  
08:41AM 7 and I think the government asked you some questions, and I  
08:41AM 8 think the answer was that these were Hawai'i Partners' cars  
08:41AM 9 that were to sell, but they're at the auction right?  
08:41AM 10 A Yes.  
08:41AM 11 Q And they made some comments about they're listed as  
08:41AM 12 private sellers, correct?  
08:41AM 13 A Yes.  
08:41AM 14 MR. KENNEDY: If we can, Your Honor, if we move to the  
08:41AM 15 12th supplemental exhibit list, Exhibit 9008-073, just for the  
08:41AM 16 witness?  
08:41AM 17 THE COURT: All right.  
08:41AM 18 MR. KENNEDY: Can we blow up this for Mr. Freitas so  
08:41AM 19 he can see a little bit?  
08:41AM 20 BY MR. KENNEDY:  
08:41AM 21 Q Do you see the attachments that are in that conversation?  
08:41AM 22 A Yes.  
08:41AM 23 MR. KENNEDY: If we move to the second page, and if we  
08:42AM 24 could blow it up so that it's a little easier to read, both in  
08:42AM 25 the top, middle and bottom. If we can move to the third page.

08:42AM 1 Keep moving through. Continue on to the next page so  
08:42AM 2 Mr. Freitas can read it, and then continue on to the next page.  
08:43AM 3 And then if we could just flip through the last pages.  
08:43AM 4 BY MR. KENNEDY:  
08:43AM 5 Q Sir, do you recognize that text communication between  
08:43AM 6 yourself and Mr. Miske?  
08:44AM 7 A I don't recognize that phone number as being mine.  
08:44AM 8 Q If you can pull it up.  
08:44AM 9 If we look through and compare, if we move to  
08:44AM 10 Exhibit 9008-073-001, do you recognize that these cars are to  
08:44AM 11 buy, not sell?  
08:44AM 12 A Yes.  
08:44AM 13 Q All right. So last week I was asking you some questions  
08:44AM 14 about those transactions. These were cars that were listed on  
08:44AM 15 Craigslist, right?  
08:44AM 16 A Yes.  
08:44AM 17 Q The ads were by someone who was selling the car, right?  
08:44AM 18 A Correct.  
08:44AM 19 Q Mr. Miske was interested in buying those cars, right?  
08:44AM 20 A Yes.  
08:44AM 21 Q And in fact with respect to each car, it was make an  
08:44AM 22 offer, right?  
08:44AM 23 A Yes.  
08:44AM 24 Q Or buy the car?  
08:44AM 25 A Yes.

08:45AM 1 Q So these were cars that he was buying at the auction

08:45AM 2 potentially, right?

08:45AM 3 A Yes.

08:45AM 4 Q And the actual exhibits were written by someone else,

08:45AM 5 correct, not Hawai'i Partners, right?

08:45AM 6 A Yes.

08:45AM 7 Q And so the testimony last week was that Hawai'i Partners

08:45AM 8 had written those ads for sale.

08:45AM 9 Do you recall that?

08:45AM 10 A I believe so, yes.

08:45AM 11 Q So I just want to clear it up for the jury, those ads were

08:45AM 12 written by private sellers that Mr. Miske wanted to buy those

08:45AM 13 cars, right?

08:45AM 14 A Yes.

08:45AM 15 Q So there was nothing deceptive about the ads. They were

08:45AM 16 written by someone else instead of Hawai'i Partners, right?

08:45AM 17 A I believe so.

08:45AM 18 Q Would you like to take a look at that again?

08:45AM 19 A Yes.

08:45AM 20 Q All right. So there were -- these were ads written by

08:45AM 21 third parties that Mr. Miske was looking to buy those cars at

08:46AM 22 the auction rather than ads written by Hawai'i Partners, by

08:46AM 23 yourself or others, correct?

08:46AM 24 A Correct.

08:46AM 25 Q All right. And so in that --

08:46AM 1 MR. KENNEDY: At this time, Your Honor, I would move  
08:46AM 2 9008-073 into evidence.

08:46AM 3 THE COURT: Any objection, Counsel?

08:46AM 4 MR. INCIONG: I don't believe there's been foundation  
08:46AM 5 laid, Your Honor. Objection.

08:46AM 6 THE COURT: Sustained.

08:46AM 7 BY MR. KENNEDY:

08:46AM 8 Q With respect to --

08:46AM 9 Let me see if we can pull up just the second page and  
08:46AM 10 then the third page, and then just the bottom portion.

08:47AM 11 On May 13th of 2015, were you working with Mr. Miske  
08:47AM 12 with Hawai'i Partners?

08:47AM 13 A I believe so, yes.

08:47AM 14 Q And do you recall setting up these appointments looking at  
08:47AM 15 these cars?

08:47AM 16 A I don't recall or recollect this conversation with these  
08:47AM 17 cars.

08:47AM 18 Q Do you recall looking at the cars themselves?

08:47AM 19 A No.

08:47AM 20 Q All right. We'll move on.

08:47AM 21 The one thing that is certain is that it wasn't ads  
08:47AM 22 produced by Hawai'i Partners. There are third-party cars  
08:47AM 23 looking to buy at the auction, right?

08:47AM 24 A Correct.

08:47AM 25 Q Okay. Now, you're familiar with the fishing vessel the



08:47AM 1 Rachel?

08:47AM 2 A Yes.

08:47AM 3 Q And the Rachel was a commercial fishing vessel?

08:47AM 4 A Yes.

08:47AM 5 Q That Mr. Miske owned, right?

08:47AM 6 A Correct.

08:47AM 7 Q When you began working as his personal assistant, right?

08:48AM 8 And you may have understood that he had it for years, right?

08:48AM 9 A Yes.

08:48AM 10 Q When it was in port, it was here in Honolulu?

08:48AM 11 A Yes.

08:48AM 12 Q And you in fact worked on the Rachel fixing rust spots,

08:48AM 13 right?

08:48AM 14 A Correct.

08:48AM 15 Q As part of your work, correct?

08:48AM 16 A Yes.

08:48AM 17 Q All right. I'd like to show you a series of photographs?

08:48AM 18 MR. KENNEDY: If we could pull up Exhibit 5004-022.

08:48AM 19 Your Honor, it's in the original exhibit list.

08:48AM 20 THE COURT: Thank you.

08:48AM 21 BY MR. KENNEDY:

08:48AM 22 Q Do you recognize what's shown in Exhibit 5004-022?

08:48AM 23 A Yes.

08:48AM 24 Q What is this?

08:48AM 25 A It's the Rachel, Mike's boat.

08:48AM 1 MR. KENNEDY: At this time, Your Honor, I'd move to  
08:48AM 2 admit 5004-022.

08:48AM 3 THE COURT: Any objection?

08:48AM 4 MR. INCIONG: No objection.

08:48AM 5 THE COURT: Without objection, that document, 5004-22,  
08:48AM 6 is admitted.

08:48AM 7 (Exhibit 5004-22 was received in evidence.)

08:49AM 8 BY MR. KENNEDY:

08:49AM 9 Q At this time I'd like to show you Exhibit 5004-023.

08:49AM 10 Do you recognize 5004-023?

08:49AM 11 A Yes.

08:49AM 12 Q What is it?

08:49AM 13 A The Rachel.

08:49AM 14 MR. KENNEDY: At this time I'd move to admit 5004-023.

08:49AM 15 MR. INCIONG: No objection.

08:49AM 16 THE COURT: Without objection, 5004-23 is admitted.  
08:49AM 17 You may publish.

08:49AM 18 (Exhibit 5004-023 was received in evidence.)

08:49AM 19 BY MR. KENNEDY:

08:49AM 20 Q At this time I'd like to show you 5004-024.

08:49AM 21 Do you recognize 5004-024?

08:49AM 22 A Yes.

08:49AM 23 Q What is it?

08:49AM 24 A The Rachel.

08:49AM 25 MR. KENNEDY: At this time I'd move 5004-024 into

08:49AM 1 evidence.

08:49AM 2 MR. INCIONG: No objection.

08:49AM 3 THE COURT: Without objection, 5004-024 is admitted.

08:49AM 4 (Exhibit 5004-024 was received in evidence.)

08:49AM 5 BY MR. KENNEDY:

08:49AM 6 Q I'd like to show you 5004-025, 5004-029.

08:49AM 7 Do you recognize 5004-029?

08:50AM 8 A Yes.

08:50AM 9 Q What is it?

08:50AM 10 A The Rachel.

08:50AM 11 Q I'd like to show you 5004-021.

08:50AM 12 Do you recognize that?

08:50AM 13 A Yes.

08:50AM 14 Q What is it?

08:50AM 15 A The Rachel.

08:50AM 16 Q And 5004-020.

08:50AM 17 Do you recognize what's shown in 5004-029 (verbatim)?

08:50AM 18 A Yes.

08:50AM 19 MR. KENNEDY: I'd move to admit 5004-021 and 5004-020.

08:50AM 20 THE COURT: Okay. Can you ask him your questions

08:51AM 21 again with respect to those two documents? I think you got the

08:51AM 22 numbering wrong in a number of your questions. You jumped all

08:51AM 23 over the place.

08:51AM 24 BY MR. KENNEDY:

08:51AM 25 Q The last one that is up on the screen is 5004-020.

08:51AM 1 Do you recognize that?

08:51AM 2 A Yes.

08:51AM 3 MR. KENNEDY: If we move back to 5004-021.

08:51AM 4 THE WITNESS: Yes.

08:51AM 5 BY MR. KENNEDY:

08:51AM 6 Q Do you recognize that document?

08:51AM 7 A Yes.

08:51AM 8 MR. KENNEDY: And if we can pull up the exhibit  
08:51AM 9 sticker and make it a little larger.

08:51AM 10 BY MR. KENNEDY:

08:51AM 11 Q Does that look like 5004-021?

08:51AM 12 A Yes.

08:51AM 13 MR. KENNEDY: All right. At this time I'd move  
08:51AM 14 5004-020 and 5004-021.

08:51AM 15 THE COURT: Any objection, Counsel?

08:51AM 16 MR. INCIONG: No objection.

08:51AM 17 THE COURT: Thank you for clarifying, Mr. Kennedy.

08:51AM 18 Those two exhibits are admitted without objection,  
08:52AM 19 5004-20 and 21.

08:51AM 20 (Exhibits 5004-020 and 5004-021 were received in  
08:51AM 21 evidence.)

08:52AM 22 MR. KENNEDY: Now, if we could publish 5004-022 for  
08:52AM 23 the jury, now that we've got them into evidence.

08:52AM 24 (Government Exhibit 5004-022 was published to the  
08:52AM 25 jury.)

08:52AM 1 BY MR. KENNEDY:

08:52AM 2 Q So this is a picture of the Rachel; is that correct?

08:52AM 3 A Yes.

08:52AM 4 MR. KENNEDY: All right. 5004-023, if we could

08:52AM 5 publish it. 5004-024, 5004-029.

08:52AM 6 (Government Exhibits 5004-023 and 5004-024 were

08:52AM 7 published to the jury.)

08:52AM 8 THE COURT: I don't think 29 has been admitted.

08:52AM 9 MR. KENNEDY: If we can pull up that very small

08:52AM 10 exhibit.

08:52AM 11 BY MR. KENNEDY:

08:52AM 12 Q Do you recognize 5004-029?

08:52AM 13 A Yes.

08:52AM 14 Q What is it?

08:52AM 15 A The Rachel.

08:52AM 16 MR. KENNEDY: All right. I'd move to admit 5004-029.

08:53AM 17 THE COURT: Any objection, Mr. Inciong?

08:53AM 18 MR. INCIONG: No objection.

08:53AM 19 THE COURT: The exhibit is admitted, that's 5004-029,

08:53AM 20 and yes, you may publish.

08:53AM 21 (Exhibit 5004-0294 was received in evidence.)

08:53AM 22 BY MR. KENNEDY:

08:53AM 23 Q And this is a picture of it in port here in Honolulu?

08:53AM 24 A I believe so, yes.

08:53AM 25 MR. KENNEDY: All right. 5004-021 and 5004-020.

08:53AM 1 BY MR. KENNEDY:

08:53AM 2 Q So now are you familiar with the fishing auction where the  
08:53AM 3 commercial catch from the Rachel would happen in Honolulu?

08:53AM 4 A Yes.

08:53AM 5 Q Where each fish is bid on individually, correct?

08:53AM 6 A Correct.

08:53AM 7 Q And so from the commercial catch, then bids are made on  
08:53AM 8 each fish. Just like at an auction for a car, bids are made on  
08:53AM 9 each car, right?

08:53AM 10 A Yes.

08:53AM 11 MR. KENNEDY: So I'd like to pull that down for the  
08:54AM 12 moment and if we could go to 5004-034, which was in the  
08:54AM 13 original exhibit list, Your Honor.

08:54AM 14 BY MR. KENNEDY:

08:54AM 15 Q Do you recognize this area sir?

08:54AM 16 A It's the fish auction.

08:54AM 17 Q Okay. And it's the fish auction here in Honolulu?

08:54AM 18 A I believe so.

08:54AM 19 MR. KENNEDY: All right. At this time I would move  
08:54AM 20 5004-034 into evidence.

08:54AM 21 THE COURT: Any objection?

08:54AM 22 MR. INCIONG: No, Your Honor.

08:54AM 23 MR. KENNEDY: May it be published?

08:54AM 24 THE COURT: Without objection, 5004-34 is admitted and  
08:54AM 25 yes, you may publish.

08:54AM 1 (Exhibit 5004-34 was received in evidence.)

08:54AM 2 BY MR. KENNEDY:

08:54AM 3 Q All right. So the fish -- commercial fishing was another  
08:54AM 4 one of the businesses that Mike Miske got involved in, right?

08:54AM 5 A Yes.

08:54AM 6 Q All right. And you were asked some questions about checks  
08:54AM 7 for Rachel fishing vessel crew members last week.

08:54AM 8 Do you recall that?

08:54AM 9 A Yes.

08:54AM 10 MR. KENNEDY: All right. So if we could pull up

08:55AM 11 9008-084, which is in the 12th supplemental exhibit list, Your  
08:55AM 12 Honor.

08:55AM 13 BY MR. KENNEDY:

08:55AM 14 Q You've been asked questions about that in the past,  
08:55AM 15 correct?

08:55AM 16 A Yes.

08:55AM 17 MR. KENNEDY: All right. We can just pull that down.

08:55AM 18 BY MR. KENNEDY:

08:55AM 19 Q So as Mr. Miske's assistant, you cashed checks for the  
08:55AM 20 Rachel fishing vessel crew members, correct?

08:55AM 21 A Yes.

08:55AM 22 Q And the Rachel fishing vessel crew members were paid a  
08:55AM 23 percentage of the total boat take, right?

08:55AM 24 A Yes.

08:55AM 25 Q So each crew member had a percentage assigned to himself

08:55AM 1 or herself if that was ever the case, right?

08:55AM 2 A Yes.

08:55AM 3 Q And that was paid by the United Fishing Agency down at the  
08:55AM 4 docks, right?

08:55AM 5 A I believe so.

08:55AM 6 Q And so they then -- there were checks that then would be  
08:55AM 7 deposited from the United Fishing Agency, right?

08:55AM 8 A Yes.

08:55AM 9 Q Which would add up to the total boat share, right?

08:56AM 10 A Yes.

08:56AM 11 Q Okay. And you had signature authority on Kama'aina  
08:56AM 12 Holdings' account, right?

08:56AM 13 A Yes.

08:56AM 14 Q And Kama'aina Holdings was a limited -- it was an LTD that  
08:56AM 15 had the Rachel as its business, right?

08:56AM 16 A Yes.

08:56AM 17 Q Okay. And so one of those accounts was at Central Pacific  
08:56AM 18 Bank, right?

08:56AM 19 A Yes.

08:56AM 20 Q And one of them was at Bank of Hawaii, right?

08:56AM 21 A Yes.

08:56AM 22 MR. KENNEDY: All right. So I'd like to pull up  
08:56AM 23 5004-043, which is in the 12th supplemental exhibit list, Your  
08:56AM 24 Honor.

08:56AM 25 THE COURT: Go ahead.



08:56AM 1 MR. KENNEDY: We can take that down.

08:56AM 2 So could we pull up 500 -- oh, there we go.

08:56AM 3 BY MR. KENNEDY:

08:57AM 4 Q All right. Sir, take a look at 5004-043.

08:57AM 5 MR. KENNEDY: And then if you move through the pages.

08:57AM 6 BY MR. KENNEDY:

08:57AM 7 Q Sir, do you recognize that document?

08:57AM 8 A Yes.

08:57AM 9 Q And on a couple of the pages were you authorized as a  
08:57AM 10 signer at Central Pacific Bank for Kama'aina Holdings' account  
08:57AM 11 regarding the Rachel?

08:57AM 12 A Yes.

08:57AM 13 MR. KENNEDY: I'd move 5004-043 into evidence, Your  
08:57AM 14 Honor.

08:57AM 15 THE COURT: Any objection, Mr. Inciong?

08:58AM 16 MR. INCIONG: No, Your Honor.

08:58AM 17 THE COURT: Without objection, 5004-43 is admitted.  
08:58AM 18 You may publish.

08:58AM 19 (Exhibit 5004-43 was received in evidence.)

08:58AM 20 MR. KENNEDY: May we publish?

08:58AM 21 THE COURT: Yes.

08:58AM 22 (Government Exhibit 5004-43 was published to the  
08:58AM 23 jury.)

08:58AM 24 MR. KENNEDY: So if we move to pages 6 and 7 and if we  
08:58AM 25 blow up around the member authorized signature, the authorized

08:58AM 1 signer.

08:58AM 2 BY MR. KENNEDY:

08:58AM 3 Q So you're an authorized signer on the account correct?

08:58AM 4 A Yes.

08:58AM 5 MR. KENNEDY: All right. We can pull that down.

08:58AM 6 BY MR. KENNEDY:

08:58AM 7 Q And this is in the 2015 time period that you talked about  
08:58AM 8 last week, to the jury, right?

08:58AM 9 A I believe so, yes.

08:58AM 10 Q Okay. If we move to page 7, it looks like, if I'm  
08:58AM 11 correct, January 15th of 2015, right?

08:58AM 12 A Yes.

08:58AM 13 MR. KENNEDY: All right. So now we can take that down  
08:58AM 14 and I'd like to pull up 9008-074, which is also in the 12th  
08:59AM 15 supplemental, Your Honor?

08:59AM 16 THE COURT: Yes. Go ahead.

08:59AM 17 MR. KENNEDY: And if we can spin that to the side.

08:59AM 18 BY MR. KENNEDY:

08:59AM 19 Q Sir, do you recognize that check?

08:59AM 20 A No, recognize it, but I know what it is.

08:59AM 21 Q What is it?

08:59AM 22 A It's an invoice for Kama'aina Holdings.

08:59AM 23 Q Okay. And do you see a check that is associated with  
08:59AM 24 that?

08:59AM 25 A Yes.

08:59AM 1 Q And do you recognize the check from -- a check that would  
08:59AM 2 come from United Fishing Agency?

08:59AM 3 A Yes.

08:59AM 4 MR. KENNEDY: All right. At this time I'd move  
08:59AM 5 9008-074 into evidence, Your Honor.

08:59AM 6 MR. INCIONG: Objection, lack of foundation of this  
08:59AM 7 specific check.

08:59AM 8 THE COURT: Sustained.

08:59AM 9 MR. KENNEDY: All right.

08:59AM 10 BY MR. KENNEDY:

08:59AM 11 Q Now, you're familiar with the process that each month when  
09:00AM 12 the commercial catch would come in, fish would be sold, a check  
09:00AM 13 would be cut for the total boat share, correct?

09:00AM 14 A Yes.

09:00AM 15 Q All right. Let's move on to -- if we take a look at --  
09:00AM 16 and in part, from time to time you would send wire transfers,  
09:00AM 17 correct?

09:00AM 18 A Yes.

09:00AM 19 Q And the wire transfers from either Central Pacific Bank or  
09:00AM 20 Bank of Hawaii would go to the boat captain, right?

09:00AM 21 A Yes.

09:00AM 22 Q And that was Alejandro Bueno or Alex?

09:00AM 23 A One of them was Alex, yes.

09:00AM 24 Q All right. Another one is Frank Crivello, right?

09:00AM 25 A Yes.

09:00AM 1 Q And so the boat captain would have a percentage and you

09:00AM 2 would wire that money to that individual, correct?

09:00AM 3 A Yes.

09:01AM 4 Q Through either Central Pacific Bank, right?

09:01AM 5 A Yes.

09:01AM 6 Q Or Bank of Hawaii.

09:01AM 7 A Yes.

09:01AM 8 Q All right. Now the Rachel fishing vessel crew members you

09:01AM 9 said were paid a percentage, right?

09:01AM 10 A Yes.

09:01AM 11 Q And so they were fishing in either the Hawaiian waters,

09:01AM 12 right?

09:01AM 13 A Yes.

09:01AM 14 Q Or the Samoan waters, correct?

09:01AM 15 A Correct.

09:01AM 16 Q And with those individuals, checks would be issued to each

09:01AM 17 of those individuals, right?

09:01AM 18 A Yes.

09:01AM 19 Q And then those checks would be endorsed, turned into cash,

09:01AM 20 and then they would be paid, right?

09:01AM 21 A Yes.

09:01AM 22 Q Because they were foreign citizens, right?

09:01AM 23 A Yes.

09:01AM 24 Q And so they couldn't get off the boat, right?

09:01AM 25 A Yes.

09:01AM 1 Q And a check wasn't going to do them much good in an a  
09:01AM 2 foreign country?  
09:01AM 3 A Correct.  
09:01AM 4 Q But there was a check that was issued to each of them in  
09:01AM 5 their name, right?  
09:01AM 6 A Yes.  
09:01AM 7 Q So you would take the checks to the bank, right?  
09:01AM 8 A Yes.  
09:01AM 9 Q Endorse them, right?  
09:01AM 10 A Yes.  
09:01AM 11 Q They would be cashed, correct?  
09:02AM 12 A Yes.  
09:02AM 13 Q And then each individual's check would be then turned into  
09:02AM 14 cash, and the cash would be given to them on the boat, right?  
09:02AM 15 A Yes.  
09:02AM 16 Q And so for the crew members, their percentages were fairly  
09:02AM 17 low on the total boat share, correct?  
09:02AM 18 A Yes, I believe so.  
09:02AM 19 Q And so each of those checks for that individual was under  
09:02AM 20 \$10,000, right?  
09:02AM 21 A Yes.  
09:02AM 22 Q And so you're acting as their agent, just cashing those  
09:02AM 23 checks for that individual, right?  
09:02AM 24 A Yes.  
09:02AM 25 Q And so each time there may be six crew members, you're

09:02AM 1 bringing six checks, all under \$10,000, to cash for that

09:02AM 2 individual, right?

09:02AM 3 A Yes.

09:02AM 4 MR. KENNEDY: All right. And if we can take a look at

09:02AM 5 Exhibit 5004-005, which is in the original exhibit list, Your

09:02AM 6 Honor.

09:02AM 7 BY MR. KENNEDY:

09:03AM 8 Q Are you familiar with this document regarding the payout

09:03AM 9 and profit sharing in the -- are you familiar with this

09:03AM 10 document, sir?

09:03AM 11 A Yes.

09:03AM 12 Q All right. And what is it?

09:03AM 13 A It's United Fishing Agency Ltd.

09:03AM 14 Q And is the date January 9th of 2015?

09:03AM 15 A Yes.

09:03AM 16 Q And I saw earlier your signature authority was on

09:03AM 17 January 15th of 2015?

09:03AM 18 A Yes.

09:03AM 19 MR. KENNEDY: At this time, Your Honor, I would move

09:03AM 20 5004-005 into evidence.

09:03AM 21 THE COURT: Any objection?

09:03AM 22 MR. INCIONG: Objection, lack of foundation.

09:03AM 23 THE COURT: Sustained.

09:03AM 24 BY MR. KENNEDY:

09:03AM 25 Q Did you use this document yourself, sir, to determine the

09:04AM 1 percentages for the crew member from the total boat share?

09:04AM 2 A I didn't do the percentages.

09:04AM 3 Q All right. Did you know the percentages?

09:04AM 4 A No.

09:04AM 5 Q Did you ask?

09:04AM 6 A I never asked.

09:04AM 7 Q Did you know what the total boat share was when you were  
09:04AM 8 doing it?

09:04AM 9 A No.

09:04AM 10 Q All right. I'll move on.

09:04AM 11 MR. KENNEDY: 9008-075, which is in the 12th  
09:04AM 12 supplemental, Your Honor.

09:04AM 13 THE COURT: Okay.

09:04AM 14 BY MR. KENNEDY:

09:04AM 15 Q Were you familiar, setting aside the document, that the  
09:04AM 16 Rachel pulled in over \$1 million during 2015?

09:04AM 17 A No.

09:04AM 18 Q All right. Let's look at 9008-075. Can you take a look  
09:04AM 19 at the first page, and the second page, third page, fourth  
09:04AM 20 page, fifth page, sixth page and seventh page.

09:05AM 21 Do you recognize those checks and the deposit that  
09:05AM 22 I've just shown you?

09:05AM 23 A Yeah, I know the checks.

09:05AM 24 Q I'm sorry?

09:05AM 25 A I do know the checks.

09:05AM 1 MR. KENNEDY: At this time, Your Honor, I would move  
09:05AM 2 9008-075 into evidence.  
09:05AM 3 MR. INCIONG: Objection, lack of foundation.  
09:05AM 4 THE COURT: Sustained.  
09:05AM 5 BY MR. KENNEDY:  
09:05AM 6 Q Sir, did you cash these checks for the foreign crew?  
09:05AM 7 A Not these specific ones.  
09:05AM 8 Q Are you familiar with the process?  
09:05AM 9 A Yes.  
09:05AM 10 Q Did you do it on other checks?  
09:05AM 11 A Yes.  
09:05AM 12 Q All right. But you don't think you did these specific  
09:05AM 13 checks.  
09:05AM 14 A No.  
09:05AM 15 Q For this specific month.  
09:05AM 16 A Yes.  
09:05AM 17 Q All right.  
09:05AM 18 MR. KENNEDY: Okay. Let's move on to  
09:06AM 19 Exhibit 9008-076.  
09:06AM 20 THE COURT: Go ahead.  
09:06AM 21 MR. KENNEDY: And if we could look through this  
09:06AM 22 document.  
09:06AM 23 BY MR. KENNEDY:  
09:06AM 24 Q Do you recognize what has been shown in 9008-076?  
09:06AM 25 A Yes.



09:06AM 1 Q Is it checks for the month of February, plus a deposit for  
09:06AM 2 the total boat share?  
09:06AM 3 A Yes.  
09:06AM 4 MR. KENNEDY: All right. At this time I'd move  
09:06AM 5 9008-076 into evidence.  
09:06AM 6 MR. INCIONG: Same objection.  
09:06AM 7 THE COURT: Same ruling.  
09:06AM 8 MR. KENNEDY: All right. Let's move on to 9008-078.  
09:06AM 9 If we can flip through this document, it's four pages.  
09:06AM 10 BY MR. KENNEDY:  
09:07AM 11 Q Do you recognize what's been shown as 9008-078?  
09:07AM 12 A Yes.  
09:07AM 13 Q Is it checks to crew members, plus a deposit?  
09:07AM 14 A Correct.  
09:07AM 15 MR. KENNEDY: I would move 9008-078 into evidence,  
09:07AM 16 Your Honor?  
09:07AM 17 MR. INCIONG: Objection, no foundation.  
09:07AM 18 THE COURT: The objection is still sustained.  
09:07AM 19 BY MR. KENNEDY:  
09:07AM 20 Q Sir, do you recognize the endorsement on the checks in  
09:07AM 21 your handwriting?  
09:07AM 22 A Yes.  
09:07AM 23 Q And the endorsement was to pay to you, correct?  
09:07AM 24 A Yes.  
09:07AM 25 Q And so you are taking the checks to the bank for the crew

09:07AM 1 members, right?

09:07AM 2 A Yes.

09:07AM 3 Q You're writing an endorsement on there on their behalf as

09:07AM 4 an agent, right?

09:07AM 5 A Yes.

09:07AM 6 Q The checks are then cashed, right?

09:07AM 7 A Yes.

09:07AM 8 Q The checks are a written record of their pay, right?

09:07AM 9 A Yes.

09:07AM 10 Q Then it's turned into the cash, the cash is brought to the

09:07AM 11 boat to pay the folks who earned it, right?

09:08AM 12 A Yes.

09:08AM 13 MR. KENNEDY: At this time I'd move 9008-078 into

09:08AM 14 evidence.

09:08AM 15 THE COURT: Any objection?

09:08AM 16 MR. INCIONG: No objection.

09:08AM 17 THE COURT: Without objection, 9008-078 is admitted

09:08AM 18 and you may publish.

09:08AM 19 MR. KENNEDY: Thank you.

09:08AM 20 (Exhibit 9008-078 was received in evidence.)

09:08AM 21 MR. KENNEDY: If we can pull up 9008-78.

09:08AM 22 BY MR. KENNEDY:

09:08AM 23 Q So this is the check that would come from United Fishing

09:08AM 24 Agency to Kama'aina Holdings LLC, right?

09:08AM 25 A Yes.

09:08AM 1 Q And then it would be deposited in the bank, correct?

09:08AM 2 A Yes.

09:08AM 3 Q It looks like this was deposited on April 10th of 2015?

09:08AM 4 A Yes.

09:08AM 5 Q And a check date was cut on April 9 of 2015.

09:08AM 6 A Yes.

09:08AM 7 Q All right.

09:08AM 8 MR. KENNEDY: If we move to the second page.

09:08AM 9 BY MR. KENNEDY:

09:08AM 10 Q This is a check in the amount of \$1,300 to a crew member,  
09:08AM 11 right?

09:08AM 12 A Yes.

09:08AM 13 MR. KENNEDY: And if we pull up the second page.

09:08AM 14 BY MR. KENNEDY:

09:08AM 15 Q For crew expense, right?

09:08AM 16 A Yes.

09:08AM 17 MR. KENNEDY: And then if we move down to the bottom  
09:08AM 18 portion of this second page and blow that up.

09:08AM 19 BY MR. KENNEDY:

09:09AM 20 Q So "Pay to the Order of" and then it's your signature,  
09:09AM 21 right?

09:09AM 22 A Correct.

09:09AM 23 Q All right. So you're endorsing this check so that it can  
09:09AM 24 be cashed, the cash can then go to the person who earned it,  
09:09AM 25 right?

09:09AM 1 A Yes.

09:09AM 2 MR. KENNEDY: If we move to the third page.

09:09AM 3 BY MR. KENNEDY:

09:09AM 4 Q With respect to the third page, this is the same process  
09:09AM 5 for this crew member, right?

09:09AM 6 A Yes.

09:09AM 7 MR. KENNEDY: And then if we move to the fourth page.

09:09AM 8 BY MR. KENNEDY:

09:09AM 9 Q Right?

09:09AM 10 A Yes.

09:09AM 11 Q Same process for this crew member, right?

09:09AM 12 A Yes.

09:09AM 13 MR. KENNEDY: All right. We can take that down.

09:09AM 14 BY MR. KENNEDY:

09:09AM 15 Q And this was the process that was followed by Mr. Miske  
09:09AM 16 and Kama'aina Holdings, right?

09:09AM 17 A Yes.

09:09AM 18 MR. KENNEDY: Now, we move to 9008-080, and if we go  
09:10AM 19 through the first page and the second page, please, and the  
09:10AM 20 third page and the fourth page.

09:10AM 21 BY MR. KENNEDY:

09:10AM 22 Q Is that blown up enough for you, sir, or can we...

09:10AM 23 A No, it's good.

09:10AM 24 Q Okay. You recognize this as the month of June checks,  
09:10AM 25 plus a deposit from Central Pacific Bank to the individual crew

09:10AM 1 members, right?

09:10AM 2 A Yes.

09:10AM 3 Q In which you are doing the endorsing, right?

09:10AM 4 A Yes.

09:10AM 5 MR. KENNEDY: At this time I'd move 9008-080, which is  
09:10AM 6 in the 12th supplemental as well, Your Honor.

09:10AM 7 THE COURT: Any objection?

09:10AM 8 MR. INCIONG: No objection.

09:10AM 9 THE COURT: Without objection, 9008-80 is admitted.  
09:10AM 10 You may publish.

09:10AM 11 (Exhibit 9008-80 was received in evidence.)

09:10AM 12 MR. KENNEDY: All right. If we go to the first page.  
09:10AM 13 The first page, if we blow up the top portion.

09:10AM 14 BY MR. KENNEDY:

09:10AM 15 Q It looks like a deposit of \$65,280 is made on the 4th of  
09:11AM 16 June, 2015?

09:11AM 17 A Yes.

09:11AM 18 Q And then the next day there is a, it appears to be --

09:11AM 19 MR. KENNEDY: If we go to the second page and blow up  
09:11AM 20 just the top portion.

09:11AM 21 BY MR. KENNEDY:

09:11AM 22 Q The next day on the 5th is a second deposit of \$50,014.66,  
09:11AM 23 right?

09:11AM 24 A Yes.

09:11AM 25 Q And the two together would be the total boat share from

09:11AM 1 that fishing venture during that month?

09:11AM 2 A Yes.

09:11AM 3 MR. KENNEDY: All right. If we move to the third  
09:11AM 4 page. Then we have one, two -- we have a number of checks, so,  
09:11AM 5 for instance, the first check, if we blow up the second one  
09:11AM 6 right there.

09:11AM 7 BY MR. KENNEDY:

09:11AM 8 Q That's a check cut to an, it looks like IPFS Corporation,  
09:12AM 9 right?

09:12AM 10 A Yes.

09:12AM 11 Q So that is just a check that's sent to a corporation in  
09:12AM 12 the normal course of business, and the check can be cashed by  
09:12AM 13 them, right?

09:12AM 14 A Yes.

09:12AM 15 Q All right. If we move down to the other -- with respect  
09:12AM 16 to crew members, you're once again just endorsing the check  
09:12AM 17 right?

09:12AM 18 A Yes.

09:12AM 19 Q There's a record of the payment of what the wages were,  
09:12AM 20 \$1,941.30, right?

09:12AM 21 A Yes.

09:12AM 22 Q It's just a percentage of what the total boat took, right?

09:12AM 23 A Yes.

09:12AM 24 Q You endorse it over here to the pay to the order of you,  
09:12AM 25 right?

09:12AM 1 A Yes.

09:12AM 2 Q So then you can turn the check into cash, get it to the  
09:12AM 3 person who earned it.

09:12AM 4 A Yes.

09:12AM 5 MR. KENNEDY: And if we scroll down.

09:12AM 6 BY MR. KENNEDY:

09:12AM 7 Q That's the same with this individual as well, correct?

09:12AM 8 A Correct.

09:12AM 9 MR. KENNEDY: If we move down.

09:12AM 10 BY MR. KENNEDY:

09:12AM 11 Q Same as to this individual, correct?

09:12AM 12 A Yes.

09:12AM 13 MR. KENNEDY: And if we move down to the last part of  
09:12AM 14 the page and blow up just the last two.

09:13AM 15 All right. And if we move to the last page.

09:13AM 16 BY MR. KENNEDY:

09:13AM 17 Q We have -- as you can see, for this individual it's  
09:13AM 18 \$3,382.16, right?

09:13AM 19 A Yes.

09:13AM 20 Q The percentage was different for the crew depending on  
09:13AM 21 what their jobs were on the boat, their experience and other  
09:13AM 22 things, right?

09:13AM 23 A Yes.

09:13AM 24 Q All right. But their pay is down to the cents, right?

09:13AM 25 A Yes.

09:13AM 1 Q On a record a check, right?

09:13AM 2 A Yes.

09:13AM 3 Q Endorsed by you.

09:13AM 4 MR. KENNEDY: And if we keep going down.

09:13AM 5 BY MR. KENNEDY:

09:13AM 6 Q Similar to this individual, correct?

09:13AM 7 A Yes.

09:13AM 8 MR. KENNEDY: Keep moving down.

09:13AM 9 BY MR. KENNEDY:

09:13AM 10 Q Now we're back to a different rate for this individual,  
09:13AM 11 right?

09:13AM 12 A Yes.

09:13AM 13 Q Okay.

09:13AM 14 MR. KENNEDY: And then moving down.

09:13AM 15 BY MR. KENNEDY:

09:14AM 16 Q This one is to pay Cardinal, right? But no endorsement is  
09:14AM 17 necessary, right?

09:14AM 18 A No.

09:14AM 19 Q All right. And if we move down, State of Hawaii DOT  
09:14AM 20 Harbors, there's a payment to them and it's just a check that  
09:14AM 21 they can cash, and there's no endorsement needed, right?

09:14AM 22 A Yes.

09:14AM 23 MR. KENNEDY: All right. We can take that down.

09:14AM 24 Now, if we pull up 9008-081, which is also in the 12th  
09:14AM 25 supplemental, Your Honor.



09:14AM 1 THE COURT: Go ahead.

09:14AM 2 BY MR. KENNEDY:

09:14AM 3 Q Sir, just take a look at this page. It's a one-page  
09:14AM 4 document.

09:14AM 5 Do you recognize the document?

09:14AM 6 A Yes.

09:14AM 7 Q All right. What is it?

09:14AM 8 A This is Central Pacific Bank.

09:14AM 9 Q Is it a wire transfer request form?

09:14AM 10 A Yes.

09:14AM 11 Q That was done on your authority.

09:14AM 12 A Yes.

09:14AM 13 MR. KENNEDY: At this time I'd move 9008-081 into  
09:15AM 14 evidence.

09:15AM 15 THE COURT: Any objection?

09:15AM 16 MR. INCIONG: No objection.

09:15AM 17 MR. KENNEDY: If we can publish.

09:15AM 18 THE COURT: Without objection, 9008-81 is admitted.  
09:15AM 19 You may publish.

09:15AM 20 (Exhibit 9008-81 was received in evidence.)

09:15AM 21 MR. KENNEDY: Now, if we can blow up just the top  
09:15AM 22 part.

09:15AM 23 BY MR. KENNEDY:

09:15AM 24 Q So this is a wire transfer in the amount of \$14,628.46?

09:15AM 25 A Yes.

09:15AM 1 Q And then it's going to, depending on who the captain was  
09:15AM 2 at this time, you indicated you knew Alejandro Bueno, right?

09:15AM 3 A Yes.

09:15AM 4 Q He was the Rachel captain in 2015, right?

09:15AM 5 A Yes.

09:15AM 6 Q So you're sending him his percentage of the total boat  
09:15AM 7 catch by wire, correct?

09:15AM 8 A Yes.

09:15AM 9 MR. KENNEDY: If we move down.

09:15AM 10 BY MR. KENNEDY:

09:15AM 11 Q The bank beneficiary, the Bank of America, right?

09:16AM 12 A Yes.

09:16AM 13 Q And so this was an example of how he received his pay, by  
09:16AM 14 a wire transfer, right?

09:16AM 15 A Yes.

09:16AM 16 Q With a written record, right?

09:16AM 17 A Yes.

09:16AM 18 MR. KENNEDY: Now, if we go to page 2, if we pull up  
09:16AM 19 9008-082 and if we go through these particular documents.

09:16AM 20 BY MR. KENNEDY:

09:16AM 21 Q All right. Do you recognize 9008-082?

09:16AM 22 A Yes.

09:16AM 23 Q What is it?

09:16AM 24 A Fishing Ltd, the United Fishing Agency.

09:17AM 25 Q Do you see your endorsements on those checks?

09:17AM 1 A No.

09:17AM 2 MR. KENNEDY: If we move to the second page.

09:17AM 3 BY MR. KENNEDY:

09:17AM 4 Q Do you recognize those?

09:17AM 5 A Yes.

09:17AM 6 MR. KENNEDY: Okay. At this time, Your Honor, I'd  
09:17AM 7 move 9008-082.

09:17AM 8 THE COURT: Any objection?

09:17AM 9 MR. INCIONG: No objection.

09:17AM 10 THE COURT: Without objection, 9008-82 is admitted.  
09:17AM 11 You may publish.

09:15AM 12 (Exhibit 9008-82 was received in evidence.)

09:17AM 13 MR. KENNEDY: All right. So if we pull up the first  
09:17AM 14 page and blow up the portion that has --

09:17AM 15 BY MR. KENNEDY:

09:17AM 16 Q This is the deposit for that month of \$88,776.52, right?

09:17AM 17 A Yes.

09:17AM 18 Q So this is deposited at Central Pacific Bank, right?

09:17AM 19 A Yes.

09:17AM 20 Q On August 6, 2015.

09:17AM 21 A Correct.

09:17AM 22 MR. KENNEDY: All right. And so if we move to page 3  
09:18AM 23 of this document.

09:18AM 24 BY MR. KENNEDY:

09:18AM 25 Q This is another wire transfer, right?

09:18AM 1 A Yes.

09:18AM 2 Q So this wire transfer would be the amounts that would be  
09:18AM 3 sent, \$15,091.97, to Alejandro Bueno, the captain, right?

09:18AM 4 A Yes.

09:18AM 5 MR. KENNEDY: Then if we move to page 2, these would  
09:18AM 6 be -- if we can blow up some of those.

09:18AM 7 BY MR. KENNEDY:

09:18AM 8 Q Once again, these are the individual crew member checks,  
09:18AM 9 right?

09:18AM 10 A Yes.

09:18AM 11 Q Endorsed by you.

09:18AM 12 A Yes.

09:18AM 13 Q There's a check showing a record of what was paid to them,  
09:18AM 14 right?

09:18AM 15 A Yes.

09:18AM 16 Q You're just turning it into cash, right?

09:18AM 17 A Correct.

09:18AM 18 Q Because a check doesn't do them any good in a foreign  
09:18AM 19 country, right?

09:18AM 20 A Yes.

09:18AM 21 Q All right. And each one of these checks, each one of  
09:18AM 22 them, is under \$10,000, right?

09:18AM 23 A Yes.

09:18AM 24 Q And so you're acting as a representative of different  
09:18AM 25 individuals simply to cash their check.

09:18AM 1 A Yes.

09:18AM 2 MR. KENNEDY: All right. We can take that down.

09:18AM 3 BY MR. KENNEDY:

09:19AM 4 Q Now, you -- last week you looked at an exhibit, which is

09:19AM 5 Government Exhibit 1-637, which was admitted into evidence.

09:19AM 6 MR. KENNEDY: If we could pull that up. I think it's

09:19AM 7 in the government's original exhibit list, Your Honor.

09:19AM 8 THE COURT: Yes. I got it.

09:19AM 9 MR. KENNEDY: And I believe it's admitted, my memory

09:19AM 10 is.

09:19AM 11 THE COURT: Yes, it's been admitted.

09:19AM 12 MR. KENNEDY: All right. I would publish it then.

09:19AM 13 THE COURT: Go ahead.

09:19AM 14 (Government Exhibit 1-637 was published to the jury.)

09:19AM 15 BY MR. KENNEDY:

09:19AM 16 Q So you were asked some questions about WhatsApp and you

09:19AM 17 were asked some questions about Signal, right?

09:19AM 18 A Yes.

09:19AM 19 Q And those questions involved whether there were

09:19AM 20 communications which were encrypted, right?

09:19AM 21 A Yes.

09:19AM 22 Q All right. WhatsApp has an encryption, right?

09:19AM 23 A Yes.

09:19AM 24 Q And Signal does as well.

09:19AM 25 A Yes.

09:19AM 1 Q And you were asked some questions about that, right?

09:19AM 2 A Yes.

09:19AM 3 Q I think you said that your communications were on phones

09:20AM 4 that were encrypted, right?

09:20AM 5 A Yes.

09:20AM 6 Q But 1-637 is just a regular chat, isn't it?

09:20AM 7 A I believe so.

09:20AM 8 Q It's not a WhatsApp, right?

09:20AM 9 A No.

09:20AM 10 Q It's not a Signal, right?

09:20AM 11 A No.

09:20AM 12 Q It's just an iMessage, right?

09:20AM 13 A Yes.

09:20AM 14 Q Between you and Mike Miske, right?

09:20AM 15 A Yes.

09:20AM 16 Q And so the 38 pages that we went through last week, this

09:20AM 17 is a nonencrypted message just on -- it's just an iMessage,

09:20AM 18 right?

09:20AM 19 A Yes.

09:20AM 20 MR. KENNEDY: And so if we move to Exhibit 1-636,

09:20AM 21 which I believe is also in evidence.

09:20AM 22 THE COURT: Go ahead. It has.

09:20AM 23 BY MR. KENNEDY:

09:20AM 24 Q This, too, is just a regular chat, right?

09:20AM 25 A Yes.

09:20AM 1 Q It's not on WhatsApp, right?

09:20AM 2 A No.

09:20AM 3 Q It's not on Signal, right?

09:20AM 4 A No.

09:20AM 5 Q It's just an iMessage, right?

09:21AM 6 A Yes.

09:21AM 7 Q Between you and Mike Miske, right?

09:21AM 8 A Yes.

09:21AM 9 MR. KENNEDY: All right. Could we publish 1-637?

09:21AM 10 THE COURT: Yes.

09:21AM 11 (Government Exhibit 1-637 was published to the jury.)

09:21AM 12 MR. KENNEDY: And let's just flip through the 38

09:21AM 13 pages.

09:21AM 14 If we move to Exhibit 1-636, which is only six pages,

09:21AM 15 and just flip through those.

09:21AM 16 BY MR. KENNEDY:

09:22AM 17 Q Those two were on a -- simply just iMessages, right?

09:22AM 18 A Yes.

09:22AM 19 Q Nothing encrypted, not WhatsApp or not Signal, right?

09:22AM 20 A No.

09:22AM 21 MR. KENNEDY: Now, we can take that down.

09:22AM 22 BY MR. KENNEDY:

09:22AM 23 Q Last week I asked you some questions about the fact that

09:22AM 24 in October of 2015, Mr. Miske was looking to buy a boat, right?

09:22AM 25 A Yes.

09:22AM 1 Q And that was prior to the accident on November 17th of  
09:22AM 2 2015, right?

09:22AM 3 A Yes.

09:22AM 4 MR. KENNEDY: And if we pull up Exhibit 9008-008,  
09:22AM 5 which I believe was admitted, Your Honor, and if we could  
09:22AM 6 publish it.

09:22AM 7 THE COURT: Which exhibit list is it on?

09:22AM 8 MR. KENNEDY: Oh, I'm sorry, Your Honor. It's on the  
09:22AM 9 seventh supplemental exhibit list. My apologies.

09:23AM 10 THE COURT: Go ahead.

09:22AM 11 (Government Exhibit 9008-008 was published to the  
09:22AM 12 jury.)

09:23AM 13 BY MR. KENNEDY:

09:23AM 14 Q All right. This was an inquiry that you were making to a  
09:23AM 15 seller of a boat on behalf of Mike Miske, right?

09:23AM 16 A Yes.

09:23AM 17 Q And we went through it last week, so this was one  
09:23AM 18 potential boat and seller that you were looking at, right?

09:23AM 19 A Yes.

09:23AM 20 Q Okay. We went through it last week. The jury heard about  
09:23AM 21 it. I'd like to show you 9008-009?

09:23AM 22 MR. KENNEDY: Which is also on the 7th supplemental  
09:23AM 23 list, Your Honor.

09:23AM 24 BY MR. KENNEDY:

09:23AM 25 Q And just take a moment to go through this, sir.



09:23AM 1 THE COURT: Go ahead.

09:24AM 2 MR. KENNEDY: And if you can keep scrolling through.

09:24AM 3 BY MR. KENNEDY:

09:24AM 4 Q Do you recognize what's been marked as 9008-009, sir?

09:24AM 5 A Yes.

09:24AM 6 Q All right. And is it a conversation regarding a different  
09:24AM 7 boat that Mike Miske was interested in purchasing?

09:24AM 8 A Yes.

09:24AM 9 MR. KENNEDY: All right. At this time I would offer  
09:24AM 10 to admit, move to admit, 9008-009.

09:24AM 11 THE COURT: Any objection?

09:24AM 12 MR. INCIONG: No objection.

09:24AM 13 THE COURT: Without objection, 9008-009 is admitted.

09:24AM 14 (Exhibit 9008-009 was received in evidence.)

09:24AM 15 MR. KENNEDY: So can we publish that?

09:24AM 16 THE COURT: Yes, you may.

09:24AM 17 (Government Exhibit 9008-009 was published to the  
09:24AM 18 jury.)

09:24AM 19 BY MR. KENNEDY:

09:24AM 20 Q So the first one we talked about last week was on

09:24AM 21 October 15th.

09:24AM 22 I believe this one is on October 5th, right?

09:24AM 23 A Yes.

09:24AM 24 Q And so this is a second conversation about a different

09:25AM 25 boat, because he's looking for a boat to purchase in October of

09:25AM 1 2015, right?

09:25AM 2 A Yes.

09:25AM 3 Q So if we move through it, and the inquiry is, "Can we meet  
09:25AM 4 at Sand Island, drop it in the water for a test drive," right?

09:25AM 5 A Yes.

09:25AM 6 Q And the response back, "For your information, if we agree  
09:25AM 7 on a price and you give me a deposit, then we can do a test  
09:25AM 8 ride. That's standard procedure. I would do it here on the  
09:25AM 9 bay," right?

09:25AM 10 A Yes.

09:25AM 11 Q So this is a second boat that Mike Miske is looking at  
09:25AM 12 during this time period to purchase, right?

09:25AM 13 A Yes.

09:25AM 14 MR. KENNEDY: We can take that down.

09:25AM 15 BY MR. KENNEDY:

09:25AM 16 Q Now, last week you talked about the fact that you logged  
09:25AM 17 the cars that were purchased at the auction on the white board,  
09:25AM 18 right?

09:25AM 19 A Yes.

09:25AM 20 Q And that eventually the information would be transferred a  
09:26AM 21 spreadsheet?

09:26AM 22 A Yes.

09:26AM 23 Q The info on the spreadsheet would have make and model of  
09:26AM 24 the vehicle, right?

09:26AM 25 A Yes.

09:26AM 1 Q Price purchased?

09:26AM 2 A Yes.

09:26AM 3 Q Price sold?

09:26AM 4 A Yes.

09:26AM 5 Q License plate?

09:26AM 6 A Yes.

09:26AM 7 Q VIN number?

09:26AM 8 A Yes.

09:26AM 9 Q Sales were cash, right?

09:26AM 10 A Yes.

09:26AM 11 Q Or cashier's check?

09:26AM 12 A Yes.

09:26AM 13 Q The spreadsheet kept track of the information for the tax

09:26AM 14 purposes?

09:26AM 15 A Yes.

09:26AM 16 Q Which was given to the accountant, right?

09:26AM 17 A Yes.

09:26AM 18 Q And I think you said Mike Miske loved cars and it was as

09:26AM 19 much a hobby as it was a business, unlike some of the other

09:26AM 20 ventures.

09:26AM 21 A Yes.

09:26AM 22 Q All right. I'd like to show you what's marked as

09:26AM 23 9008-083.

09:26AM 24 MR. KENNEDY: Which is in the 12th supplemental

09:26AM 25 exhibit list, Your Honor.

09:26AM 1 THE COURT: Go ahead.

09:26AM 2 BY MR. KENNEDY:

09:26AM 3 Q Do you recognize 9008-083 for the year 2018?

09:26AM 4 A Yes.

09:26AM 5 MR. KENNEDY: If we move through to the second page  
09:26AM 6 and then the third page.

09:26AM 7 BY MR. KENNEDY:

09:26AM 8 Q Is this a spreadsheet which you just described for 2018?

09:27AM 9 A Yes, sir.

09:27AM 10 MR. KENNEDY: At this time, Your Honor, I'd move  
09:27AM 11 9008-083 into evidence.

09:27AM 12 THE COURT: Any objection?

09:27AM 13 MR. INCIONG: No objection.

09:27AM 14 THE COURT: Without objection, 9008-083 is admitted.  
09:27AM 15 (Exhibit 9008-083 was received in evidence.)

09:27AM 16 MR. KENNEDY: May we publish?

09:27AM 17 THE COURT: Yes, you may.

09:27AM 18 (Government Exhibit 9008-083 was published to the  
09:27AM 19 jury.)

09:27AM 20 MR. KENNEDY: On the left-hand corner if we just blow  
09:27AM 21 up the top part so that it's a little larger.

09:27AM 22 BY MR. KENNEDY:

09:27AM 23 Q The purchase dates for each of the vehicles is shown,  
09:27AM 24 right?

09:27AM 25 A Yes.

09:27AM 1 Q The VIN number for each vehicle is shown, right?

09:27AM 2 A Yes.

09:27AM 3 Q The year of the car is shown.

09:27AM 4 A Yes.

09:27AM 5 Q The make of the car is shown.

09:27AM 6 A Yes.

09:27AM 7 Q The model is shown.

09:27AM 8 A Yes.

09:27AM 9 Q The color is shown.

09:27AM 10 A Yes.

09:27AM 11 Q The seller is shown.

09:27AM 12 A Yes.

09:27AM 13 Q The purchase amount is shown.

09:27AM 14 A Yes.

09:27AM 15 Q If there's a cashier's check involved, that's shown.

09:27AM 16 A Yes.

09:27AM 17 Q The sale date is shown.

09:27AM 18 A Yes.

09:27AM 19 Q The sold amount is shown.

09:27AM 20 A Yes.

09:27AM 21 Q And so off this spreadsheet you can see whether a profit

09:28AM 22 was made or not, right?

09:28AM 23 A Yes.

09:28AM 24 Q And so you have all the information that is presented to

09:28AM 25 the accountant for tax purposes, right?

09:28AM 1 A Yes.

09:28AM 2 MR. KENNEDY: And so if we just move back from this

09:28AM 3 and just go back.

09:28AM 4 BY MR. KENNEDY:

09:28AM 5 Q Then this is beginning on February 7th of 2018, correct?

09:28AM 6 A Yes.

09:28AM 7 Q Moving to the last -- on the first page we get to May 23rd

09:28AM 8 of 2018?

09:28AM 9 A Yes.

09:28AM 10 Q And then it's current if we go to the last page into

09:28AM 11 October of 2018.

09:28AM 12 A Yes.

09:28AM 13 Q All right. And this was what would happen from the white

09:28AM 14 board to the spreadsheet, to the accountant, right?

09:28AM 15 A Yes.

09:28AM 16 MR. KENNEDY: Now, we can take that down.

09:28AM 17 BY MR. KENNEDY:

09:28AM 18 Q We talked a little bit about the Mauna Kea hotel project,

09:29AM 19 right?

09:29AM 20 A Yes.

09:29AM 21 Q And you gave some testimony about what you did on that in

09:29AM 22 the year 2019 after you started working in August of 2019?

09:29AM 23 A Yes.

09:29AM 24 Q And into 2020, right?

09:29AM 25 A Yes.

09:29AM 1 MR. KENNEDY: I want to pull up 9008-072, which is in  
09:29AM 2 the 12th supplemental exhibit list, and just flip through this  
09:29AM 3 document for Mr. Freitas.  
09:29AM 4 BY MR. KENNEDY:  
09:30AM 5 Q Sir, does that refresh your recollection about this  
09:30AM 6 proposal?  
09:30AM 7 A 2013, yes.  
09:30AM 8 Q So there was a proposal in 2013, right?  
09:30AM 9 A Yes.  
09:30AM 10 Q That was for a structural tent fumigation?  
09:30AM 11 A Yes.  
09:30AM 12 Q The main tower, right?  
09:30AM 13 A Yes.  
09:30AM 14 Q Beach cottage?  
09:30AM 15 A Yes.  
09:30AM 16 Q Breezeways?  
09:30AM 17 A Yes.  
09:30AM 18 Q Restaurants?  
09:30AM 19 A Yes.  
09:30AM 20 Q Spa?  
09:30AM 21 A Yes.  
09:30AM 22 Q Gym?  
09:30AM 23 A Yes.  
09:30AM 24 Q Retail stores?  
09:30AM 25 A Yes.

09:30AM 1 Q Loading areas, right?

09:30AM 2 A Yes.

09:30AM 3 Q The proposal included references?

09:30AM 4 A Yes.

09:30AM 5 Q Certificate of liability insurance?

09:30AM 6 A Yes.

09:30AM 7 Q Floor plans, right?

09:30AM 8 A Yes.

09:31AM 9 Q Information about the difference between Vikane and orange

09:31AM 10 oil in terms of how you kill the termites?

09:31AM 11 A Yes.

09:31AM 12 Q And information of the difference between a tent

09:31AM 13 fumigation with Vikane versus spot treatment, right?

09:31AM 14 A Yes.

09:31AM 15 Q Spot treatment is simply if you have a problem right here,

09:31AM 16 treating this spot, right?

09:31AM 17 A Yes.

09:31AM 18 Q Tent fumigation would be treating this whole place, right?

09:31AM 19 A Correct.

09:31AM 20 Q And that this continued on to 2014 with this proposal,

09:31AM 21 right?

09:31AM 22 A I believe so.

09:31AM 23 Q And Dave Melton was someone that you knew?

09:31AM 24 A Yes.

09:31AM 25 Q He was the project manager?



09:31AM 1 A Yes.

09:31AM 2 Q And it was submitted to Lloyd Leong at Mauna Kea hotel.

09:31AM 3 A Yes.

09:31AM 4 MR. KENNEDY: At this time, Your Honor, I'd move  
09:31AM 5 9008-072 into evidence.

09:31AM 6 MR. INCIONG: Objection, lack of foundation.

09:31AM 7 THE COURT: The objection is overruled. The document  
09:31AM 8 will be received and admitted, 9008-72.

09:32AM 9 (Exhibit 9008-72 was received in evidence.)

09:32AM 10 MR. KENNEDY: So if we can publish that.

09:32AM 11 (Government Exhibit 9008-72 was published to the  
09:32AM 12 jury.)

09:32AM 13 BY MR. KENNEDY:

09:32AM 14 Q So this is a folder that has that particular proposal in  
09:32AM 15 it, right?

09:32AM 16 A Yes.

09:32AM 17 MR. KENNEDY: All right. If we move to the second  
09:32AM 18 page.

09:32AM 19 BY MR. KENNEDY:

09:32AM 20 Q So this is a proposal for what I just described in terms  
09:32AM 21 of a structural tent fumigation, right?

09:32AM 22 A Yes.

09:32AM 23 MR. KENNEDY: And if we just blow up the top portion,  
09:32AM 24 and if we just kind of slide through.

09:32AM 25 BY MR. KENNEDY:

09:32AM 1 Q There's the job scope that we just discussed, right?

09:32AM 2 A Yes.

09:32AM 3 MR. KENNEDY: All right. And then if we keep

09:32AM 4 scrolling through.

09:32AM 5 BY MR. KENNEDY:

09:32AM 6 Q If you saw, this is a six-day job, right?

09:32AM 7 A Yes.

09:32AM 8 Q All right. If we move to page 7, 8 and 9 in 90872 --

09:33AM 9 908-072, these are the references, right?

09:33AM 10 A Yes.

09:33AM 11 Q So references are given to them about prior jobs which

09:33AM 12 have been done, correct?

09:33AM 13 A Correct.

09:33AM 14 Q All right. If we move to page 10, this is a certificate

09:33AM 15 of liability insurance, right?

09:33AM 16 A Yes.

09:33AM 17 Q And there's a warranty that comes with this, which would

09:33AM 18 be a five-year warranty for spot treatment, correct?

09:33AM 19 A Yes.

09:33AM 20 Q All right. If we move to page 37 to 38, there's a

09:33AM 21 detailed correspondence in June of 2014, right?

09:33AM 22 A Yes.

09:33AM 23 Q Setting forth what is attached, right?

09:33AM 24 A Yes.

09:33AM 25 Q Okay. And if we move to page 39 and 40, we have the

09:34AM 1 proposal, and if we move back a page, looks like Dave Melton is  
09:34AM 2 the project manager then, correct?

09:34AM 3 A Yes.

09:34AM 4 Q And so the Mauna Kea Beach Hotel, as early as 2013, is a  
09:34AM 5 job that is internal within Kama'aina Termite and Pest Control,  
09:34AM 6 right?

09:34AM 7 A Yes.

09:34AM 8 MR. KENNEDY: All right. If we move on and we can  
09:34AM 9 take that down, it looks like if we pull up 9008-086, just take  
09:34AM 10 a moment to go through these pages, and this is also in the  
09:35AM 11 12th supplemental exhibit list, Your Honor.

09:35AM 12 BY MR. KENNEDY:

09:35AM 13 Q Do you recognize 9008-086?

09:35AM 14 A Yes.

09:35AM 15 Q Is it a proposal in 2018 for the Mauna Kea hotel?

09:35AM 16 A Yes.

09:35AM 17 MR. KENNEDY: At this time I'd move 9008-086 into  
09:35AM 18 evidence.

09:35AM 19 THE COURT: Any objection?

09:35AM 20 MR. INCIONG: No objection.

09:35AM 21 THE COURT: Without objection, 9008-86 is admitted and  
09:35AM 22 you may publish.

09:35AM 23 (Exhibit 9008-86 was received in evidence.)

09:35AM 24 MR. KENNEDY: May we publish?

09:35AM 25 THE COURT: Yes.

09:35AM 1 MR. KENNEDY: All right.

09:35AM 2 (Government Exhibit 9008-86 was published to the

09:35AM 3 jury.)

09:35AM 4 MR. KENNEDY: So this is the first page. If we move

09:35AM 5 to the second page. Move to the third page.

09:35AM 6 BY MR. KENNEDY:

09:35AM 7 Q Okay. Do you recognize the individual here?

09:35AM 8 A Yes.

09:35AM 9 Q Is it Mike Worden?

09:35AM 10 A Yes.

09:35AM 11 Q And he's the project manager at this time, correct?

09:36AM 12 I believe we asked questions yesterday about that.

09:36AM 13 A Yes.

09:36AM 14 Q All right. And on page 4 you can see Michael Worden as

09:36AM 15 the project manager on the proposal in 2018; is that correct?

09:36AM 16 A Yes.

09:36AM 17 Q All right. Moving on to page 6, it's a structural tent

09:36AM 18 fumigation again.

09:36AM 19 A Yes.

09:36AM 20 Q A proposal that is being made again to the main tower,

09:36AM 21 right?

09:36AM 22 A Yes.

09:36AM 23 Q Beach cottage?

09:36AM 24 A Yes.

09:36AM 25 Q Breezeway?

09:36AM 1 A Yes.

09:36AM 2 Q The restaurants?

09:36AM 3 A Yes.

09:36AM 4 Q Retail stores?

09:36AM 5 A Yes.

09:36AM 6 Q Gym and spa area, right?

09:36AM 7 A Correct.

09:36AM 8 Q And then the warranty that I asked you about, it's a

09:36AM 9 five-year spot treatment warranty?

09:36AM 10 A Yes.

09:36AM 11 Q All right. And then if we look at page 16 through 19,

09:36AM 12 once again we have references on projects that Kama'aina

09:37AM 13 Termite and Pest Control has done which are similar in scale,

09:37AM 14 right?

09:37AM 15 A Yes.

09:37AM 16 MR. KENNEDY: If we just move through. So now moving

09:37AM 17 to --

09:37AM 18 BY MR. KENNEDY:

09:37AM 19 Q This is a continuing negotiations with Mauna Kea which

09:37AM 20 began in 2013, right?

09:37AM 21 A Yes.

09:37AM 22 Q And now we're into 2018, correct?

09:37AM 23 A Um-hm.

09:37AM 24 Q If it's six days, the place has to be shut down, right?

09:37AM 25 A Yes.

09:37AM 1 Q No guests can come, right?

09:37AM 2 A No.

09:37AM 3 Q So it's a fairly big deal to do a fumigation that lasts  
09:37AM 4 close to a week, right?

09:37AM 5 A Yes.

09:37AM 6 MR. KENNEDY: So now if we move to 9008-087, which is  
09:37AM 7 also in the 12th supplemental exhibit list, Your Honor.

09:37AM 8 BY MR. KENNEDY:

09:38AM 9 Q Do you recognize 9008-087?

09:38AM 10 A Yes.

09:38AM 11 MR. KENNEDY: And if we could move through those  
09:38AM 12 pages.

09:38AM 13 BY MR. KENNEDY:

09:38AM 14 Q This is a structural fumigation agreement?

09:38AM 15 A Yes.

09:38AM 16 Q Continuing with the Mauna Kea Beach Hotel, correct?

09:38AM 17 A Yes.

09:38AM 18 MR. KENNEDY: I'd move 9008-087 into evidence. It's  
09:38AM 19 also in the 12th supplemental, Your Honor.

09:38AM 20 THE COURT: Any objection?

09:38AM 21 MR. INCIONG: No objection.

09:38AM 22 THE COURT: Without objection, 9008-87 is admitted.  
09:38AM 23 You may publish.

09:38AM 24 (Exhibit 9008-087 was received in evidence.)

09:38AM 25 MR. KENNEDY: If we could publish, please.

09:38AM 1 BY MR. KENNEDY:

09:38AM 2 Q So this is a continuing -- this is now a third attempt,  
09:38AM 3 right?

09:39AM 4 A Yes.

09:39AM 5 Q All right. If we move through.

09:39AM 6 Okay. And Jake Matthews is now the project manager,  
09:39AM 7 right?

09:39AM 8 A Yes.

09:39AM 9 MR. KENNEDY: If we move to 9008-088, which is also in  
09:39AM 10 the 12th supplemental exhibit list, Your Honor.

09:39AM 11 THE COURT: Go ahead.

09:39AM 12 MR. KENNEDY: And if we can blow up the top portion.  
09:39AM 13 Then if we can scroll down.

09:39AM 14 BY MR. KENNEDY:

09:39AM 15 Q And then there is a, it looks like an attachment, correct?

09:40AM 16 A Yes.

09:40AM 17 Q All right. So now this is a letter in March, or excuse  
09:40AM 18 me, an email in March of 2020 that also references  
09:40AM 19 communications back in, I believe it's July of 2019, correct?

09:40AM 20 A Yes.

09:40AM 21 MR. KENNEDY: All right. So at this time I would move  
09:40AM 22 9008-088 into evidence.

09:40AM 23 THE COURT: Any objection, Mr. Inciong?

09:40AM 24 MR. INCIONG: Yes. Objection, lack of foundation.

09:40AM 25 THE COURT: Sustained.

09:40AM 1 BY MR. KENNEDY:

09:40AM 2 Q Sir, are you familiar with this communication?

09:40AM 3 A Yes.

09:40AM 4 Q Is it -- the project has already now been a walk-through  
09:40AM 5 in the first part of March, right, of 2020?

09:40AM 6 A Yes.

09:40AM 7 Q And so this is part of the business records of Kama'aina  
09:40AM 8 Termite and Pest Control, right?

09:40AM 9 A Yes.

09:41AM 10 Q Made at a time and is accurate in detail, correct?

09:41AM 11 A Yes.

09:41AM 12 MR. KENNEDY: At this time I'd move 9008-088 into  
09:41AM 13 evidence.

09:41AM 14 MR. INCIONG: Same objection.

09:41AM 15 THE COURT: The objection is overruled. The document  
09:41AM 16 is received and admitted that's 9008-88. You may publish.

09:41AM 17 (Exhibit 9008-088 was received in evidence.)

09:41AM 18 BY MR. KENNEDY:

09:41AM 19 Q If we blow up the first part.

09:41AM 20 Now, the individual who had been the engineer, I  
09:41AM 21 believe you testified, at Mauna Kea left and a new person took  
09:41AM 22 over, right?

09:41AM 23 A Yes.

09:41AM 24 Q And so Mr. Miske is sending the proposal after he flew  
09:41AM 25 with a crew and took a look at the facility with individuals to



09:41AM 1 finalize actually doing the tent fumigation, right?

09:41AM 2 A Yes. I was there.

09:41AM 3 Q And so you were with him on that trip, right?

09:42AM 4 A Yes.

09:42AM 5 Q Okay. And so that was a trip to make certain that you

09:42AM 6 viewed the property, right?

09:42AM 7 A Yes.

09:42AM 8 Q And so we saw some videos yesterday of -- excuse me, not

09:42AM 9 yesterday, but last week on Friday of you looking at a rooftop

09:42AM 10 trying to figure out how those things could be tented, right?

09:42AM 11 A No, we didn't see those pictures.

09:42AM 12 Q You were looking at a property that you were looking at

09:42AM 13 what to bid and asking questions?

09:42AM 14 A Yes, yes, correct.

09:42AM 15 Q All right. So part of the walk-through was to take a look

09:42AM 16 at what's the vegetation, what's the height, how are we going

09:42AM 17 to tent this, all of these buildings do all this, right?

09:42AM 18 A Yes.

09:42AM 19 Q So this is part of that project, right?

09:42AM 20 A Correct.

09:42AM 21 Q All right. And if we go down on this document, Mike

09:42AM 22 Worden, back in July of 2019, is still communicating with Lloyd

09:42AM 23 Leong, right?

09:42AM 24 A Yes.

09:42AM 25 Q And Lloyd Leong was the director of engineering at Mauna

09:43AM 1 Kea, correct?

09:43AM 2 A Yes.

09:43AM 3 Q And so he's indicating that he'll be leaving, he doesn't  
09:43AM 4 know who's gonna take over, so he's telling Mr. Worden that  
09:43AM 5 fact at that time, right?

09:43AM 6 A Yes.

09:43AM 7 Q Mr. Worden, in 2020, is no longer with Kama'aina Termite  
09:43AM 8 and Pest Control, right?

09:43AM 9 A Correct.

09:43AM 10 Q And so Mike Miske is communicating directly with him in  
09:43AM 11 this document, right?

09:43AM 12 A Yes.

09:43AM 13 Q And "him" I mean the new director of engineering, right?

09:43AM 14 A Yes.

09:43AM 15 Q We can take that down.

09:43AM 16 And so the Mauna Kea hotel project had been in the  
09:43AM 17 works for seven years, right?

09:43AM 18 A Yes.

09:43AM 19 Q Proposals had been made twice before you were even brought  
09:43AM 20 in to do sales, right?

09:43AM 21 A Yes.

09:43AM 22 Q Now, and this was an internal project, not someone calling  
09:43AM 23 in and asking for a -- to communicate with someone in sales and  
09:44AM 24 following up with that lead, right?

09:44AM 25 A Can you repeat that?

09:44AM 1 Q This wasn't the same as someone calling up and saying,  
09:44AM 2 hey, I'd like to have my house fumigated, can someone follow up  
09:44AM 3 and get back in touch with me. That would happen in the  
09:44AM 4 office, right?

09:44AM 5 A It was a call-in.

09:44AM 6 Q What's that?

09:44AM 7 A It was a call-in. Jason did call in to the office.

09:44AM 8 Q Communicating on a basis of five years of two prior  
09:44AM 9 proposals, right?

09:44AM 10 A Yes.

09:44AM 11 Q As opposed to someone who had never contacted the business  
09:44AM 12 before.

09:44AM 13 A Yes.

09:44AM 14 Q Now, I want to talk to you a little bit about the M  
09:44AM 15 Nightclub, right?

09:44AM 16 A Yes.

09:44AM 17 Q All right. You were shown a number of pictures last week?

09:44AM 18 A Yes.

09:44AM 19 Q Okay. Now, the M Nightclub for you was party central,  
09:44AM 20 right?

09:45AM 21 A Yes.

09:45AM 22 Q I think you said you tried to get there every weekend?

09:45AM 23 A Yes.

09:45AM 24 Q You weren't paying for drinks, right?

09:45AM 25 A No.

09:45AM 1 Q You got 86'd one day, right?

09:45AM 2 A Yes.

09:45AM 3 Q Let back in the next?

09:45AM 4 A Yes.

09:45AM 5 Q And that happened more than once, right?

09:45AM 6 A Correct.

09:45AM 7 Q And you were family, right?

09:45AM 8 A Yes.

09:45AM 9 Q And that's what you do for family, right?

09:45AM 10 A Yes.

09:45AM 11 Q And that's how Mike Miske saw it, didn't he?

09:45AM 12 A Yes.

09:45AM 13 Q And you know, there's a Bruce Springsteen song that says,

09:45AM 14 "A man who turns his back on his family, he ain't no good," and

09:45AM 15 that's kind of the way this worked, didn't it?

09:45AM 16 A Yes.

09:45AM 17 Q Now, we've seen some photos in the exhibits of the

09:45AM 18 M Nightclub, right?

09:45AM 19 A Yes.

09:45AM 20 Q And some of those photos include Mike Miske in them,

09:45AM 21 right?

09:45AM 22 A Yes.

09:45AM 23 Q And he was during that time with the M Nightclub, the

09:45AM 24 owner, right?

09:45AM 25 A Yes.

09:45AM 1 Q And folks want to have their picture taken with him,

09:46AM 2 right?

09:46AM 3 A Yes.

09:46AM 4 Q And that happened numerous times, didn't it?

09:46AM 5 A Yes.

09:46AM 6 Q And you saw it, right?

09:46AM 7 A Yes.

09:46AM 8 Q So someone has a picture, hey, I know the owner, they come

09:46AM 9 back -- this is business, right?

09:46AM 10 A Yes.

09:46AM 11 Q So when you were at the M, it was a party; for Mike, it

09:46AM 12 was a business, right?

09:46AM 13 A No. He was teaching me about the business.

09:46AM 14 Q Yeah. He was also teaching you about the business, right?

09:46AM 15 A Correct.

09:46AM 16 Q What I'm saying, he was at the M Nightclub because he

09:46AM 17 owned it and that was his business, right?

09:46AM 18 A Yes.

09:46AM 19 Q When you were there to party, you were there to party,

09:46AM 20 right?

09:46AM 21 A Yeah.

09:46AM 22 Q But when -- he was also teaching you about the business,

09:46AM 23 right?

09:46AM 24 A Yes.

09:46AM 25 Q Okay. And so when he's standing in these photos with

09:46AM 1 other people, that's just what you do when you're in business,  
09:46AM 2 right?

09:46AM 3 A Yes.

09:46AM 4 Q So now that all ended on March 12th of 2016 for Mike  
09:46AM 5 Miske, didn't it?

09:46AM 6 A Yeah. He didn't show up anymore.

09:47AM 7 Q He didn't show up anymore, did he?

09:47AM 8 A No.

09:47AM 9 Q When Caleb died, that part of his life went with him.  
09:47AM 10 Showing up at the M, dealing with the M, that was over, right?

09:47AM 11 A Yes.

09:47AM 12 Q He had lost his son and you had lost someone that you were  
09:47AM 13 very close to, his son, as well?

09:47AM 14 A Yes.

09:47AM 15 Q So now there was a celebration of life for Caleb, right?

09:47AM 16 A Yes.

09:47AM 17 Q And then there was a celebration that went out to the bay,  
09:47AM 18 right?

09:47AM 19 A Yes.

09:47AM 20 Q And so I'd like to show you 9008-085.

09:47AM 21 MR. KENNEDY: Which is in the 12th supplemental as  
09:47AM 22 well, Your Honor.

09:47AM 23 THE COURT: Go ahead.

09:47AM 24 BY MR. KENNEDY:

09:47AM 25 Q Do you recognize that photo?

09:47AM 1 A Yes.

09:47AM 2 Q How is it that you recognize it?

09:47AM 3 A That's family there and friends.

09:47AM 4 Q All right. And was this taken during the celebration of  
09:47AM 5 life component that was at the bay?

09:48AM 6 A Yes.

09:48AM 7 MR. KENNEDY: At this time I'd move 9008-085 into  
09:48AM 8 evidence.

09:48AM 9 THE COURT: Any objection?

09:48AM 10 MR. INCIONG: No objection.

09:48AM 11 THE COURT: Without objection, 9008-85 is admitted.  
09:48AM 12 You may publish.

09:48AM 13 MR. KENNEDY: Thank you, sir.

09:48AM 14 (Exhibit 9008-085 was received in evidence.)

09:48AM 15 BY MR. KENNEDY:

09:48AM 16 Q Do you see yourself in there, sir?

09:48AM 17 A Yes.

09:48AM 18 Q Are you grabbing a hand of another?

09:48AM 19 A Yes.

09:48AM 20 Q And this was the day that after the celebration of Caleb's  
09:48AM 21 life, his ashes were taken there and spread in the bay, right?

09:48AM 22 A Yes.

09:48AM 23 Q All right. And so I'd like to show you, sir -- do you  
09:48AM 24 recall, before I get to that, do you recall that there were a  
09:48AM 25 number of jet skis involved?

09:48AM 1 A Yes.

09:48AM 2 Q And that there was at the bay where every Friday after  
09:48AM 3 that you got together, there was a tent set up for individuals?

09:48AM 4 A Yes.

09:48AM 5 Q And then there was a boat for people to go out into the  
09:48AM 6 bay to see the spreading of the ashes, right?

09:49AM 7 A Yes.

09:49AM 8 Q And so you were there for that, right?

09:49AM 9 A Yes.

09:49AM 10 Q Were you on one of the jet skis?

09:49AM 11 A I believe so.

09:49AM 12 MR. KENNEDY: All right. Your Honor, I'd like to pull  
09:49AM 13 up 9008-086. It's a 15-minute video. I don't intend to play  
09:49AM 14 the whole thing, but I want to just show the jury portions of  
09:49AM 15 it since Mr. Freitas was there.

09:49AM 16 THE COURT: Do you mean 9008-89?

09:49AM 17 MR. KENNEDY: Is it 9008-89? Let me check with -- I  
09:49AM 18 do.

09:49AM 19 THE COURT: All right.

09:49AM 20 BY MR. KENNEDY:

09:49AM 21 Q And if we could begin to play -- what are we looking at  
09:49AM 22 here, sir?

09:49AM 23 A This is the bay.

09:49AM 24 MR. KENNEDY: All right. I move to admit 9008-89 and  
09:49AM 25 ask that it be published.



09:49AM 1 THE COURT: Any objection, Mr. Inciong?

09:49AM 2 MR. INCIONG: This is the video, this particular

09:49AM 3 exhibit?

09:50AM 4 MR. KENNEDY: Yes.

09:50AM 5 MR. INCIONG: Objection, lack of foundation.

09:50AM 6 MR. KENNEDY: We can play it through a little way.

09:50AM 7 THE COURT: Yes. You may need to lay more foundation.

09:50AM 8 MR. KENNEDY: Let's just play it through for

09:50AM 9 Mr. Freitas.

09:50AM 10 (Video was played for the witness.)

09:51AM 11 MR. KENNEDY: And we can stop it right there.

09:51AM 12 BY MR. KENNEDY:

09:51AM 13 Q Sir, in seeing that video, do you recognize it as the

09:51AM 14 celebration of life on the water for Caleb?

09:51AM 15 A Yes.

09:51AM 16 Q And did you see the area that at the bay, a tent set up

09:52AM 17 for individuals to be there later in the celebration?

09:52AM 18 A Yes.

09:52AM 19 Q And there's a boat that you can see where individuals

09:52AM 20 could go out on a flat boat and watch the actual spreading of

09:52AM 21 the ashes.

09:52AM 22 A Yes.

09:52AM 23 MR. KENNEDY: At this time, Your Honor, I would move

09:52AM 24 9008-089, which is on the 12th supplemental, into evidence,

09:52AM 25 Your Honor.

09:52AM 1 THE COURT: Any objection?

09:52AM 2 MR. INCIONG: No objection to the portion that the  
09:52AM 3 witness has seen and authenticated.

09:52AM 4 Beyond that, the objection remains.

09:52AM 5 THE COURT: Do you intend to show him portions of this  
09:52AM 6 exhibit, Mr. Kennedy, that extend beyond what we just saw or  
09:52AM 7 what the witness just saw?

09:52AM 8 You said you didn't intend to show --

09:52AM 9 MR. KENNEDY: I did not.

09:52AM 10 THE COURT: I wasn't sure which portion of it.

09:52AM 11 MR. KENNEDY: We can go through the entire video.  
09:52AM 12 Does the government want me to splice it at this  
09:52AM 13 point?

09:52AM 14 MR. INCIONG: Like I said, I have no objection up to  
09:52AM 15 the point that the witness has seen and authenticated.

09:53AM 16 MR. KENNEDY: Okay. Your Honor, I think I can live  
09:53AM 17 with that. We will splice it and make it 9008-089. I don't  
09:53AM 18 want to take the jury's time to go through 15 minutes and then  
09:53AM 19 show it to them again.

09:53AM 20 THE COURT: So you will stop it at this point and that  
09:53AM 21 portion --

09:53AM 22 MR. KENNEDY: And do we have a timing on there since I  
09:53AM 23 can't see it on my screen?

09:53AM 24 THE COURT: I can't either on mine. So one minute and  
09:53AM 25 35 seconds. That sounds about right of what we just saw, and

09:53AM 1 that will then be spliced into 9008-89 alpha; is that correct?

09:53AM 2 MR. KENNEDY: That is correct, Your Honor.

09:53AM 3 THE COURT: Okay. And then that, the alpha exhibit,

09:53AM 4 will be admitted without objection. Go ahead.

09:53AM 5 (Exhibit as 9008-89A received in evidence.)

09:53AM 6 MR. KENNEDY: If we can go back to the front,

09:53AM 7 Ms. King, and then publish it for the jury.

09:53AM 8 BY MR. KENNEDY:

09:53AM 9 Q And before we start it, sir, what area of Honolulu are we

09:53AM 10 looking at here?

09:53AM 11 A Hawaii Kai.

09:53AM 12 Q All right. And the jet skis and the boats are going in an

09:53AM 13 easterly direction?

09:54AM 14 A Yes.

09:54AM 15 Q All right. And off to the left here, we'll get closer to

09:54AM 16 that, but is this area right here near to a boat ramp?

09:54AM 17 A Yes, it's near a boat ramp.

09:54AM 18 Q Okay. And then this area down here is the grassy area

09:54AM 19 that you mentioned last week where folks would get together,

09:54AM 20 right?

09:54AM 21 A Yes.

09:54AM 22 Q All right. And as we get closer, we will see that in that

09:54AM 23 area right here there is a tent set up for folks for the

09:54AM 24 celebration of life, correct?

09:54AM 25 A Correct.

09:54AM 1 Q And then eventually out in the open area water here there  
09:54AM 2 will be a flatbed boat that has individuals on it who  
09:54AM 3 eventually see the spreading of the ashes, right?

09:54AM 4 A Yes.

09:54AM 5 Q And the jet skis are going in that direction, correct?

09:55AM 6 A Correct.

09:55AM 7 MR. KENNEDY: All right. We can play the video now.

09:55AM 8 (Video was played for the jury.)

09:55AM 9 BY MR. KENNEDY:

09:55AM 10 Q And you are one of the members on the jet skis  
09:55AM 11 participating in this, correct?

09:55AM 12 A I believe so.

09:55AM 13 MR. KENNEDY: And, Ms. King, if we stop it just right  
09:55AM 14 there.

09:55AM 15 BY MR. KENNEDY:

09:55AM 16 Q Is this the tent that I was circling before that now we're  
09:55AM 17 close enough to see the chairs and other things that are set up  
09:55AM 18 after the ashes are spread, correct?

09:55AM 19 A Yes.

09:55AM 20 MR. KENNEDY: We can continue, Ms. King. Thank you.

09:55AM 21 (Video was played for the jury.)

09:56AM 22 MR. KENNEDY: If we stop it right there.

09:56AM 23 BY MR. KENNEDY:

09:57AM 24 Q We have a boat right here, correct?

09:57AM 25 A Yes.

09:57AM 1 Q All right. And then if we continue a little bit longer,  
09:57AM 2 jet skis are getting near this particular flatbed boat,  
09:57AM 3 correct?

09:57AM 4 A Yes.

09:57AM 5 Q And there are individuals out there who aren't on jet  
09:57AM 6 skis, but they want to see the spreading of the ashes and so  
09:57AM 7 they have been ferried out there in that boat, correct?

09:57AM 8 A Yes.

09:57AM 9 MR. KENNEDY: And is this right near the end,  
09:57AM 10 Ms. King?

09:57AM 11 MS. KING: Yes.

09:57AM 12 MR. KENNEDY: All right. We can take it down then.

09:57AM 13 BY MR. KENNEDY:

09:57AM 14 Q So what transpired, what happened is spreading of the  
09:57AM 15 ashes, folks that were on the jet skis went back over and  
09:57AM 16 continued with the celebration of life, correct?

09:57AM 17 A Yes.

09:57AM 18 Q So now after that it became a family tradition to go to  
09:58AM 19 that area where we saw the tent, every Friday as honoring  
09:58AM 20 Caleb, right?

09:58AM 21 A Yes.

09:58AM 22 Q Because one of the things he loved to do was jet ski?

09:58AM 23 A Yes.

09:58AM 24 Q And he was a street racer, right?

09:58AM 25 A Yes.

09:58AM 1 Q He liked speed, correct?

09:58AM 2 A Yes.

09:58AM 3 Q Like a lot of us; fast cars, fast skis, fast jet skis.

09:58AM 4 A Yes.

09:58AM 5 Q And so every Friday the family would go there and get

09:58AM 6 together to keep his memory alive, right?

09:58AM 7 A Yes.

09:58AM 8 Q And you participated in some of those as well, correct?

09:58AM 9 A Yes.

09:58AM 10 Q So you mentioned Mike Miske didn't set foot back in the

09:58AM 11 club after that, right?

09:58AM 12 A Yeah. He wasn't showing up at all.

09:58AM 13 Q He didn't show up at all, right?

09:58AM 14 And so eventually M Nightclub closed, right?

09:59AM 15 A Yes.

09:59AM 16 Q And Jason Yokoyama, who had been the general manager,

09:59AM 17 purchased the club, right?

09:59AM 18 A Yes.

09:59AM 19 Q And he remodeled the club, right?

09:59AM 20 A Yes.

09:59AM 21 Q And the look of the club changed, right?

09:59AM 22 A Yes.

09:59AM 23 Q And the name of the club changed, right?

09:59AM 24 A Yes.

09:59AM 25 Q Because it was no longer the M, right?

09:59AM 1 A Yes.

09:59AM 2 Q That was done and it became Encore at the Row, right?

09:59AM 3 A Yes.

09:59AM 4 Q I want to show you some pictures, 9372-003, 004 and 005?

09:59AM 5 MR. KENNEDY: Which are in the 9th supplement exhibit

09:59AM 6 list, Your Honor. You probably don't have that one in front of

09:59AM 7 you so...

09:59AM 8 BY MR. KENNEDY:

09:59AM 9 Q Sir, do you recognize what's shown in 9372-003?

09:59AM 10 A Yes.

09:59AM 11 Q And then if we can show you 9372-004 and 9372-005.

10:00AM 12 Do you recognize those three photographs, 9372-003,

10:00AM 13 9372-004 and 9372-005, to be photographs of the Encore at the

10:00AM 14 Row?

10:00AM 15 A Yes.

10:00AM 16 Q And this was after the remodel, right?

10:00AM 17 A Yes.

10:00AM 18 MR. KENNEDY: Your Honor, at this time I'd move

10:00AM 19 9372-003, 004 and 005.

10:00AM 20 THE COURT: Any objection?

10:00AM 21 MR. INCIONG: No objection. My only issue is that it

10:00AM 22 looks like there are two different exhibit numbers, at least on

10:00AM 23 this exhibit we're looking at right here.

10:00AM 24 MR. KENNEDY: Let's see.

10:00AM 25 MR. INCIONG: There are maybe multiple pages. I'm not

10:00AM 1 sure.

10:00AM 2 MR. KENNEDY: I think on those exhibits they should  
10:01AM 3 just be one-page photographs. I have a copy. I think those  
10:01AM 4 are the same as what is shown on the screen, but let's see if  
10:01AM 5 we can get it right if there's something messed up.

10:01AM 6 MR. INCIONG: I think there's just a 001 that's added  
10:01AM 7 on the lower left-hand corner, but it's the same three  
10:01AM 8 exhibits, so no objection.

10:01AM 9 THE COURT: All right.

10:01AM 10 MR. KENNEDY: Yes, there is that, Your Honor, because  
10:01AM 11 just to explain that, once it's in the computer, each page has  
10:01AM 12 an individual number in it and so if it's a 20-page document,  
10:01AM 13 it would be 9372-005 and then it would be dash 0001 through  
10:02AM 14 dash 00020 so you can call it out.

10:02AM 15 When it's a one-page document, it's -- for the  
10:02AM 16 computer it still has the four digits at the end.

10:02AM 17 THE COURT: Without objection, 9372-003, 004, 005,  
10:02AM 18 each of which is a one-page photograph, is admitted. You may  
10:02AM 19 publish.

10:02AM 20 (Exhibits 9372-003, 9372-004 and 9372-005 were  
10:02AM 21 received in evidence.)

10:02AM 22 BY MR. KENNEDY:

10:02AM 23 Q If we can start with 9372-003.

10:02AM 24 So now this changed the look of what had been the M,  
10:02AM 25 which had closed and was now Encore at the Row, correct?



10:02AM 1 A Yes.

10:02AM 2 Q And then if we move to 9372-004.

10:02AM 3 This was an area at the Encore at the Row, right?

10:02AM 4 A Yes.

10:02AM 5 Q And then 9372-005.

10:03AM 6 Another area inside Encore at the Row, right?

10:03AM 7 A Yes.

10:03AM 8 Q Which completely remodeled because it was a new club under  
10:03AM 9 new ownership, right?

10:03AM 10 A Yes.

10:03AM 11 Q So now Jason Yokoyama is the owner, right?

10:03AM 12 A Yes.

10:03AM 13 Q Jason Yokoyama is now the boss and it's his club, right?

10:03AM 14 A Yes.

10:03AM 15 Q All right. Now, did you have knowledge of a post that was  
10:03AM 16 made that referenced Jason Yokoyama's club, the Encore?

10:03AM 17 A Yes.

10:03AM 18 Q I believe you testified about it last week.

10:03AM 19 Were you aware that The District, one of The District  
10:03AM 20 owners set up a meeting to apologize directly to Mr. Yokoyama?

10:04AM 21 A No, I don't recall that.

10:04AM 22 Q So you weren't aware that an apology was made at the front  
10:04AM 23 door, and there was interplay between Mr. Yokoyama and one of  
10:04AM 24 the owners at The District where Mr. Yokoyama was not accepting  
10:04AM 25 the apology. You didn't know about that.

10:04AM 1 A No.

10:04AM 2 Q Now, I want to ask you some questions about inside The  
10:04AM 3 District on March 4th of 2015, okay?

10:04AM 4 A Okay.

10:04AM 5 Q When you were in there, you just wanted people to leave,  
10:04AM 6 right?

10:04AM 7 A Yes.

10:04AM 8 Q You didn't want to cause anyone any harm, right?

10:04AM 9 A Yes.

10:04AM 10 Q From the chemical release, right?

10:04AM 11 A Yes.

10:05AM 12 Q And you sure didn't want to give any severe harm to  
10:05AM 13 anyone, right?

10:05AM 14 A Yes.

10:05AM 15 Q So let me ask you some questions about that.

10:05AM 16 When we left off on Friday, I played the 911 call for  
10:05AM 17 you because we had a few minutes of time.

10:05AM 18 Do you recall that 911 call?

10:05AM 19 A Yes.

10:05AM 20 Q All right. Do you recall that that time that call was  
10:05AM 21 made was at 1:41:42 a.m. on Saturday, March 4th?

10:05AM 22 A Yes.

10:05AM 23 Q Okay. So the call is made and it's in evidence. So the  
10:05AM 24 caller says, "I want to make a police report." You heard that,  
10:05AM 25 right?

10:05AM 1 A Yes.

10:05AM 2 Q Someone released pepper spray, right?

10:05AM 3 A Yes.

10:05AM 4 Q Cleared out the entire club, right?

10:05AM 5 A Yes.

10:05AM 6 Q Wants to make a report about it?

10:05AM 7 A Yes.

10:05AM 8 Q It's The District nightclub. He identifies where he's

10:06AM 9 calling from and what he's associated with, right?

10:06AM 10 A Yes.

10:06AM 11 Q He's the manager, right?

10:06AM 12 A Yes.

10:06AM 13 Q They ask about an ambulance and he says, "There's one

10:06AM 14 coming for something that's totally different."

10:06AM 15 Do you recall that?

10:06AM 16 A Yes.

10:06AM 17 Q And he says his name is Reid and he has no idea who

10:06AM 18 released the pepper spray.

10:06AM 19 A Yes.

10:06AM 20 Q So the club is clear at 1:41:42 that night, or excuse me,

10:06AM 21 that morning, correct?

10:06AM 22 A Yes.

10:06AM 23 Q All right. Now, shortly before that 911 call, you and

10:06AM 24 Jake Smith drive to the District Nightclub, right?

10:06AM 25 A Yes.

10:06AM 1 Q You're in your black Mercedes right?

10:06AM 2 A Yes.

10:06AM 3 Q You entered the club, right?

10:06AM 4 A Yes.

10:06AM 5 Q You squirted the liquid chemical, right?

10:06AM 6 A Yes.

10:06AM 7 Q Into a trash can.

10:06AM 8 A Yes.

10:06AM 9 Q Near the dance floor.

10:06AM 10 A Correct.

10:06AM 11 Q You walked out of the club.

10:06AM 12 A Yes.

10:06AM 13 Q Into your black Mercedes.

10:07AM 14 A Yes.

10:07AM 15 Q You and Jake Smith departed the club.

10:07AM 16 A Yes.

10:07AM 17 Q And drove to Encore Nightclub, right?

10:07AM 18 A Yes.

10:07AM 19 Q And you went inside Encore Nightclub, right?

10:07AM 20 A Yes.

10:07AM 21 Q Earlier that evening you and Jake Smith again, right?

10:07AM 22 A Yes.

10:07AM 23 Q Drove to the District Nightclub, right?

10:07AM 24 A Yes.

10:07AM 25 Q And once you arrived, you saw that security was wandering

10:07AM 1 folks, right?

10:07AM 2 A Yes.

10:07AM 3 Q So you decided that the metal cap on the Jägermeister

10:07AM 4 bottle would be detected by a wand, right?

10:07AM 5 A Yes.

10:07AM 6 Q So you decided that a plastic bottle would be better,

10:07AM 7 right?

10:07AM 8 A Yes.

10:07AM 9 Q And you made that decision right?

10:07AM 10 A Yes.

10:07AM 11 Q And Jake Smith made that decision, right?

10:07AM 12 A Yes.

10:07AM 13 Q And so you and Jake Smith drove in your black Mercedes,

10:08AM 14 right, to Walmart, right?

10:08AM 15 A Yes.

10:08AM 16 Q Near the Ala Moana shopping area, right?

10:08AM 17 A Yes.

10:08AM 18 Q Which is open 24 hours, right?

10:08AM 19 A Yes.

10:08AM 20 Q To purchase a plastic, ketchup-style bottle, right?

10:08AM 21 A Yes.

10:08AM 22 Q Because there was a metal detector in operation, right?

10:08AM 23 A Yes.

10:08AM 24 Q And you made that determination, right?

10:08AM 25 A Yes.

10:08AM 1 Q And since you decided it would not detect the plastic  
10:08AM 2 bottle, right?  
10:08AM 3 A Yes.  
10:08AM 4 Q Before that happened, you were given the chemical, right?  
10:08AM 5 A Yes.  
10:08AM 6 Q In a mini Jägermeister bottle, right?  
10:08AM 7 A Yes.  
10:08AM 8 Q By Jake Smith, right?  
10:08AM 9 A Yes.  
10:08AM 10 Q At Encore Nightclub, right?  
10:08AM 11 A I believe so, yes.  
10:08AM 12 Q And Jake Smith had the chemicals in a metal container,  
10:08AM 13 right?  
10:08AM 14 A Yes.  
10:08AM 15 Q Jake Smith never told you what was in the bottle, right?  
10:08AM 16 A No.  
10:08AM 17 Q You never asked Jake Smith what was in the bottle, right?  
10:09AM 18 A No.  
10:09AM 19 Q And it was Jake Smith who gave you the Jägermeister  
10:09AM 20 bottle, right?  
10:09AM 21 A Yes.  
10:09AM 22 Q So then at that point you drive to the District Nightclub,  
10:09AM 23 right?  
10:09AM 24 A Yes.  
10:09AM 25 Q And you stopped, right?

10:09AM 1 A Yes.

10:09AM 2 Q And at the Ala Moana parking structure you transfer the

10:09AM 3 Jägermeister chemical into the plastic bottle, right?

10:09AM 4 A Yes.

10:09AM 5 Q I believe you told at that point you threw the

10:09AM 6 Jägermeister bottle away.

10:09AM 7 A I believe so, yes.

10:09AM 8 Q Okay. Then you drove to the nightclub, right?

10:09AM 9 A Yes.

10:09AM 10 Q The chemical was released and you went back to Encore,

10:09AM 11 right?

10:09AM 12 A Yes.

10:09AM 13 Q Now, after that at Encore, you returned to Encore after

10:10AM 14 the 911 call, right?

10:10AM 15 A I'm not sure. I don't think so.

10:10AM 16 Q And you and Keoni Adric drive back, right?

10:10AM 17 A Yes.

10:10AM 18 Q You say in his white Mercedes, right?

10:10AM 19 A Yes.

10:10AM 20 Q Not in your black Mercedes.

10:10AM 21 A No.

10:10AM 22 Q And you saw fire trucks, right?

10:10AM 23 A Yes.

10:10AM 24 Q You saw ambulances, right?

10:10AM 25 A Yes.

10:10AM 1 Q You don't remember if you took any pictures --

10:10AM 2 A No.

10:10AM 3 Q -- of what you saw and you were with Keoni Adric, right?

10:10AM 4 A Yes.

10:10AM 5 Q Now Keoni Adric is the same Keoni Adric who was with

10:10AM 6 Keli'i Young, Frankie Silva, Lance Bermudez and you when you

10:10AM 7 robbed Mike Char, right?

10:10AM 8 A Yes.

10:10AM 9 Q When you were trying to rob him of that what you thought

10:11AM 10 was \$100,000, right?

10:11AM 11 A Yes.

10:11AM 12 Q And they had masks and guns, right?

10:11AM 13 A Yes.

10:11AM 14 Q At the bay, right?

10:11AM 15 A Yes.

10:11AM 16 Q And that's when Mike Miske got angry that he destroyed

10:11AM 17 your car, right?

10:11AM 18 A Yes.

10:11AM 19 Q And that's when Mike Char went to Mike Miske and said, "I

10:11AM 20 was robbed. Can you help me?" He returned his -- figured out

10:11AM 21 how to get the car back to him, right?

10:11AM 22 A Yes.

10:11AM 23 Q And that car was returned by making phone calls, right?

10:11AM 24 A Yes.

10:11AM 25 Q And then Mike Miske decided to wreck your car because you



10:11AM 1 had robbed someone, right?

10:11AM 2 A Yes.

10:11AM 3 Q And as you said, he never knew about any of these

10:11AM 4 robberies, right?

10:11AM 5 A Yes.

10:11AM 6 Q Now, at the Encore Nightclub, are you aware that on -- let

10:12AM 7 me ask you some questions.

10:12AM 8 You talked about GPS last week, right?

10:12AM 9 A Yes.

10:12AM 10 Q So you know about GPS, right?

10:12AM 11 A Yes.

10:12AM 12 Q Both in devices, right?

10:12AM 13 A Yes.

10:12AM 14 Q And you were wearing a monitor at one point, an ankle

10:12AM 15 monitor, that is GPS-related, right?

10:12AM 16 A Yes.

10:12AM 17 Q That gives locations, correct?

10:12AM 18 A Yes.

10:12AM 19 Q And so you're familiar that with respect to, say, cellular

10:12AM 20 phones, they operate by connecting to cell towers, right?

10:12AM 21 A Yes.

10:12AM 22 Q And the cell towers are among the cell towers that are

10:12AM 23 nearby, right?

10:12AM 24 A Yes.

10:12AM 25 Q And they're going for a signal which is the strongest

10:12AM 1 signal, right?

10:12AM 2 A Um-hm.

10:12AM 3 Q So it could be a different cell tower, right?

10:12AM 4 A Yes.

10:12AM 5 Q But it's in a general area, correct?

10:12AM 6 A Yes.

10:12AM 7 Q Now, last week you told us that after you released the

10:13AM 8 chemical inside the District, right?

10:13AM 9 A Yes.

10:13AM 10 Q You drove back to the Encore Nightclub, right?

10:13AM 11 A Yes.

10:13AM 12 Q And you met with Mike Miske in person, right?

10:13AM 13 A Yes.

10:13AM 14 Q He's never been inside the Encore Nightclub, sir.

10:13AM 15 A He was there that night.

10:13AM 16 Q He stopped going to the M and never went to the Encore.

10:13AM 17 You're familiar with that, right? And so this was after the

10:13AM 18 chemical was released, correct?

10:13AM 19 A Yes.

10:13AM 20 Q You say that Mike Miske was at the Encore, right?

10:13AM 21 A Yes.

10:13AM 22 Q Are you familiar with the fact that -- do you know about

10:13AM 23 cell phone location information?

10:13AM 24 A Yes.

10:13AM 25 Q That there are towers where the cell phones that you're

10:13AM 1 carrying are ping off of?

10:13AM 2 A Yes.

10:13AM 3 Q Are you aware that from 11:30 that evening all the way up

10:14AM 4 to -- from 11:49 all the way up to 1:24, Mike Miske is in

10:14AM 5 Hawaii Kai?

10:14AM 6 MR. INCIONG: Objection, facts not in evidence.

10:14AM 7 THE COURT: Sustained.

10:14AM 8 BY MR. KENNEDY:

10:14AM 9 Q Are you aware, sir? Because you've told this jury that

10:14AM 10 Mike Miske was at the Encore, right?

10:14AM 11 A Yes.

10:14AM 12 Q And you said that he never stepped back into the M,

10:14AM 13 correct?

10:14AM 14 That was your testimony today, right?

10:14AM 15 A Yeah, he never was there.

10:14AM 16 Q And he's never stepped foot in the Encore, has he?

10:14AM 17 A Yes, he has.

10:14AM 18 Q Were you aware that he was in Hawaii Kai during that time

10:14AM 19 between 11:30, 11:49 and 1:24 on Saturday, March 4th?

10:14AM 20 A I wasn't aware.

10:14AM 21 Q Are you aware that from 1:30 to 1:32 he's in the Portlock

10:15AM 22 area? Are you aware of that?

10:15AM 23 A No.

10:15AM 24 Q For the outer island folks, that would be going east on

10:15AM 25 the far east side of Oahu, correct, Portlock area?

10:15AM 1 A Yes.

10:15AM 2 Q Would be east of Hawaii Kai, right?

10:15AM 3 A Yes.

10:15AM 4 Q Are you aware that between 1:33 and 1:35 in the morning

10:15AM 5 he's in Waimanalo?

10:15AM 6 A At what time?

10:15AM 7 Q He's in Waimanalo between 1:33 and 1:35.

10:15AM 8 A No, I wasn't aware.

10:15AM 9 Q Moving around the windward side of the island, are you

10:15AM 10 aware that from 1:51 to 4:35 in the morning he's in Kailua,

10:15AM 11 correct, where you live, correct?

10:15AM 12 A Yes.

10:15AM 13 Q We're in Honolulu, right?

10:15AM 14 A Yes.

10:15AM 15 Q The District Nightclub is in downtown Honolulu, right?

10:15AM 16 A Yes.

10:15AM 17 Q To get to Kailua you're taking the Pali all the way from

10:16AM 18 south to north, right?

10:16AM 19 A Yes.

10:16AM 20 Q Across the mountains, right?

10:16AM 21 A Yes.

10:16AM 22 Q So from 1:51 to 4:35, he's in Kailua, correct?

10:16AM 23 A I'm not sure. I know he was there that night.

10:16AM 24 Q And so the 911 call was at 1:41:42, right?

10:16AM 25 A Yes.

10:16AM 1 Q You went back to Encore, right?

10:16AM 2 A Yes.

10:16AM 3 Q Now, you were on the windward side of Oahu almost that  
10:16AM 4 entire day, weren't you?

10:16AM 5 A I'm not sure where I was that day.

10:16AM 6 Q Never went to the office that day, did you?

10:16AM 7 A No.

10:16AM 8 Q Because you too have a cell phone, right?

10:16AM 9 A Yes.

10:16AM 10 Q And we looked at the number and it's (808) 585-1944,  
10:17AM 11 correct?

10:17AM 12 A Yes.

10:17AM 13 Q That cell phone is connecting to towers, right?

10:17AM 14 A Yes.

10:17AM 15 Q And so it wasn't until 11:35 p.m. that you came down the  
10:17AM 16 Pali with Jake Smith, right?

10:17AM 17 A At what time.

10:17AM 18 Q 11:35 p.m. on Friday, March 3rd.

10:17AM 19 A Yes.

10:17AM 20 Q When Mike Miske was in Hawaii Kai.

10:17AM 21 MR. INCIONG: Objection, misstates the evidence.

10:17AM 22 THE COURT: Objection is sustained.

10:17AM 23 BY MR. KENNEDY:

10:17AM 24 Q Now, you also told the jury that this event was out of the  
10:17AM 25 blue.

10:17AM 1 Do you recall that?

10:17AM 2 A Yes.

10:17AM 3 Q And that it was Mike Miske who asked you to release tear  
10:17AM 4 gas, right?

10:17AM 5 A Correct.

10:18AM 6 Q And that this happened at the M Nightclub is what you  
10:18AM 7 said, right?

10:18AM 8 A Refers the M Nightclub.

10:18AM 9 Q Which he stopped going into and was closed at the time of  
10:18AM 10 this event, right?

10:18AM 11 A It was Encore.

10:18AM 12 Q Encore Nightclub owned by Jason Yokoyama, right?

10:18AM 13 A Yes.

10:18AM 14 Q Are you aware that your phone and Michael Miske's cell  
10:18AM 15 phone are never together that entire day?

10:18AM 16 MR. INCIONG: Objection, assumes facts not in  
10:18AM 17 evidence.

10:18AM 18 THE COURT: Sustained.

10:18AM 19 BY MR. KENNEDY:

10:18AM 20 Q But you had your cell phone with you that day, didn't you?

10:18AM 21 A Yes.

10:18AM 22 Q Now, you gave some testimony last week that you sold oxy  
10:18AM 23 pills for yourself, right?

10:18AM 24 A Yes.

10:18AM 25 Q And you sold cocaine for yourself, right?

10:18AM 1 A Yes.

10:18AM 2 Q And not one dime went to Mike Miske, right?

10:18AM 3 A Yes.

10:18AM 4 Q You robbed Mike Char and others, right?

10:19AM 5 A Yes.

10:19AM 6 Q And not one dime went to Mike Miske, right?

10:19AM 7 A Yes.

10:19AM 8 Q You taxed people for yourself, right?

10:19AM 9 A Yes.

10:19AM 10 Q And not one dime went to Mike Miske?

10:19AM 11 A No.

10:19AM 12 Q Jake Smith, Lance Bermudez, Keoni Adric, they all rob

10:19AM 13 people and not one dime, you testified, went to Mike Miske?

10:19AM 14 MR. INCIONG: Objection, calls for speculation.

10:19AM 15 THE COURT: Sustained.

10:19AM 16 BY MR. KENNEDY:

10:19AM 17 Q Based on your knowledge, correct?

10:19AM 18 A Yes.

10:19AM 19 Q Now, the government asked you some questions about your

10:19AM 20 plea agreement and I want to ask you some follow-up questions

10:19AM 21 about that, okay?

10:19AM 22 You told the jury last week that you pled guilty to

10:19AM 23 the chemical weapon count, right?

10:19AM 24 A Yes.

10:19AM 25 Q And it carried a maximum sentence of life in prison,

10:19AM 1 right?

10:19AM 2 A Yes.

10:19AM 3 Q And you pled to a RICO conspiracy count that carried a

10:19AM 4 maximum of 20 years in prison, correct?

10:20AM 5 A Yes.

10:20AM 6 Q And they were dismissing the drug count that had a maximum

10:20AM 7 of life imprisonment, right?

10:20AM 8 A Yes.

10:20AM 9 Q And government counsel asked you about your understanding

10:20AM 10 as to your Advisory Sentencing Guideline range, correct?

10:20AM 11 A Yes.

10:20AM 12 Q And that's a body of law that's advisory, right?

10:20AM 13 A Yes.

10:20AM 14 Q So it can inform the judge, but the judge gets to use his

10:20AM 15 or her discretion based on other law as to what the sentence

10:20AM 16 will be, right?

10:20AM 17 A Yes.

10:20AM 18 Q Okay. And I believe you said that you understood, I think

10:20AM 19 from your lawyer, if I'm incorrect you can correct me, that the

10:20AM 20 range that you believe you're at is 72 to 81 months, right?

10:20AM 21 A Yes.

10:20AM 22 Q And so somewhere around six to seven years.

10:20AM 23 A Yes.

10:20AM 24 Q That's before cooperation, right?

10:20AM 25 A Yes.



10:20AM 1 Q And if the government makes a motion that you have  
10:21AM 2 cooperated, then what you said you were looking for was  
10:21AM 3 leniency, right?

10:21AM 4 A Yes.

10:21AM 5 Q That motion can factor into what the sentence ultimately  
10:21AM 6 is going to be, correct?

10:21AM 7 A Yes.

10:21AM 8 Q Now, as part of your plea agreement there was no  
10:21AM 9 adjustment up on the numbers for substantial disruption of  
10:21AM 10 business function or services.

10:21AM 11 Do you recall that?

10:21AM 12 A Yes.

10:21AM 13 Q And just to help the members of the jury out, for all  
10:21AM 14 offenses there's a 1 to a 43, right?

10:21AM 15 A Yes.

10:21AM 16 Q And 43 is for the -- is life, right?

10:21AM 17 A Yes.

10:21AM 18 Q They have a one, but I've never seen it, but there's a  
10:21AM 19 number that goes into various offenses and there's adjustments  
10:21AM 20 up, there's adjustments down, correct?

10:21AM 21 A Yes.

10:21AM 22 Q So this was an adjustment up that the government agreed  
10:22AM 23 would not be pursued in your case, right?

10:22AM 24 A Yes.

10:22AM 25 Q For any substantial disruption of business function or

10:22AM 1 services, right?

10:22AM 2 A Yes.

10:22AM 3 Q So you have no mandatory minimum sentence, right?

10:22AM 4 A No.

10:22AM 5 Q And you're looking for leniency in your sentence now,

10:22AM 6 right?

10:22AM 7 A Yes.

10:22AM 8 Q So you were detained at the Federal Detention Center here

10:22AM 9 in Honolulu for, if I'm correct, somewhere around 18 months,

10:22AM 10 right?

10:22AM 11 A Yes.

10:22AM 12 Q And you told us you had two kids to support, right?

10:22AM 13 A Yes.

10:22AM 14 Q And so you decided in March of, I believe, 2021 to

10:22AM 15 cooperate, right?

10:22AM 16 A Yes.

10:22AM 17 Q In a proffer, right?

10:22AM 18 A Yes.

10:22AM 19 Q And a proffer is you sit down with the prosecutors and the

10:22AM 20 agents, they ask you questions, right?

10:23AM 21 A Yes.

10:23AM 22 Q You answer them, right?

10:23AM 23 A Yes.

10:23AM 24 Q And none of what your answers are can be used against you,

10:23AM 25 correct?

10:23AM 1 A Yes.

10:23AM 2 Q And then in 2022, you entered into a formal plea agreement  
10:23AM 3 that we just went over, right?

10:23AM 4 A Yes.

10:23AM 5 Q And you're awaiting sentencing at some point after this  
10:23AM 6 trial is over.

10:23AM 7 A Yes.

10:23AM 8 Q Now, is it fair to say that you hope never to walk back  
10:23AM 9 inside a prison?

10:23AM 10 A Yes.

10:23AM 11 Q You can ask for time served, can't you?

10:23AM 12 A That's mainly up to the judge.

10:23AM 13 Q Of course it's up to the judge, but you can ask for time  
10:23AM 14 served, right?

10:23AM 15 A Yes.

10:23AM 16 Q So you can continue to support your two kids, right?

10:23AM 17 A Yes.

10:23AM 18 Q You don't want to do another day in prison, do you?

10:23AM 19 A I don't think anybody wants to.

10:23AM 20 Q No one does, correct?

10:23AM 21 A Correct.

10:24AM 22 Q That's why you're here, right?

10:24AM 23 A Yes.

10:24AM 24 Q Now, let me ask you a question. The video that we  
10:24AM 25 watched, do you see the ashes being spread in that video?

10:24AM 1 A In this video, no.

10:24AM 2 Q Okay. If we played it on, have you seen that particular  
10:24AM 3 video before?

10:24AM 4 A I think so. I believe so.

10:24AM 5 Q And your memory is we don't get to that point where the  
10:24AM 6 ashes are spread, right?

10:24AM 7 A Yes.

10:24AM 8 Q I will check it when we have a break.

10:25AM 9 Now --

10:25AM 10 THE COURT: In fact if you're going to a different or  
10:25AM 11 new area, Mr. Kennedy, a break might be where --

10:25AM 12 MR. KENNEDY: That would be fine and it will -- just  
10:25AM 13 to let the Court and the government know, I don't have that  
10:25AM 14 much left, so if we take a break now, I'll finish up fairly  
10:25AM 15 quickly after that.

10:25AM 16 THE COURT: Let's go ahead and do that then and it  
10:25AM 17 will give you a chance to check your notes as well.

10:25AM 18 As we go to our first break of the trial day and trial  
10:25AM 19 week, I'll remind our jurors to please refrain from discussing  
10:25AM 20 the substance of this case with anyone, including each other,  
10:25AM 21 till I advise you otherwise; please also refrain from accessing  
10:25AM 22 any media or other accounts of this case that may be out there,  
10:25AM 23 and finally, do not conduct any independent investigation into  
10:25AM 24 the facts, circumstances or persons involved.

10:25AM 25 We will try to keep it to 15 or 20 minutes and then we

10:25AM 1 will resume with Mr. Kennedy's cross of the witness,

10:25AM 2 Mr. Freitas.

10:25AM 3 (Proceedings were recessed at 10:25 a.m. to 10:57

10:37AM 4 a.m.)

10:57AM 5 THE COURT: All right. Back from our first morning

10:57AM 6 break. Mr. Freitas is back on the stand and Mr. Kennedy was

10:57AM 7 going to continue with his cross.

10:57AM 8 BY MR. KENNEDY:

10:57AM 9 Q Sir, I want to just circle back to something. Sometimes

10:57AM 10 in trials there's rules and I just want to try to get through

10:57AM 11 this.

10:57AM 12 MR. KENNEDY: If we could pull up 1-636, which was

10:57AM 13 admitted.

10:57AM 14 THE COURT: Yes. Go ahead.

10:57AM 15 BY MR. KENNEDY:

10:57AM 16 Q Do you see the -- that particular exhibit and that

10:57AM 17 communication exchange?

10:57AM 18 A Yes.

10:57AM 19 Q All right. And you can see that MM is up at the top

10:57AM 20 portion.

10:57AM 21 A Yes, see that.

10:57AM 22 Q All right. And if we move to 1.637, that also has been

10:58AM 23 admitted.

10:58AM 24 And if we go to the top portion, can you see MM is at

10:58AM 25 the top portion?

10:58AM 1 A Yes.

10:58AM 2 Q You gave some testimony last week about the fact that  
10:58AM 3 these particular conversations occurred and that they were  
10:58AM 4 taken from an iPhone 6 that you didn't have, but the government  
10:58AM 5 showed you and actually introduced it into evidence last week.

10:58AM 6 Do you recall that?

10:58AM 7 A Yes.

10:58AM 8 Q All right. Now, if we go to the Exhibit 1-643, that was  
10:58AM 9 admitted and that's coming from your same iPhone 6, correct,  
10:59AM 10 and you testified about that last week?

10:59AM 11 A Yes.

10:59AM 12 Q All right. And if we move to 1.644, which has also been  
10:59AM 13 admitted, that too came from your iPhone 6, right?

10:59AM 14 A Yes.

10:59AM 15 Q And you testified about it last week.

10:59AM 16 A Yes.

10:59AM 17 Q All right. And then 1-646, that also came from your  
10:59AM 18 iPhone 6 and it was admitted last week, right?

10:59AM 19 A Yes.

10:59AM 20 Q And just to close this down, 1.647, which was -- you  
10:59AM 21 testified about it last week, this also came from your iPhone  
10:59AM 22 6, right?

10:59AM 23 A Yes.

10:59AM 24 MR. KENNEDY: Now, if we pull up just for the witness,  
10:59AM 25 9008-073, which is in the 12th supplement, Your Honor.

10:59AM 1 BY MR. KENNEDY:

10:59AM 2 Q And if we go to -- you can see on the first page there is  
10:59AM 3 attachments, correct?

10:59AM 4 A Correct.

10:59AM 5 Q So if we move, Ms. King, to, I believe it might start at  
11:00AM 6 about page 6 or 7. When there -- and if we move to page 7.

11:00AM 7 Keep going. Okay.

11:00AM 8 Now, do you see that in 9008-073 that -- a photograph  
11:00AM 9 of the same Honda, 2003 Honda Prelude?

11:00AM 10 A Yes.

11:00AM 11 Q Okay. And let's just flip through the photographs. Keep  
11:00AM 12 going. All right. Keep going. Keep going. Keep going. Keep  
11:01AM 13 going.

11:01AM 14 Now, do you see the 2000 Honda Accord?

11:01AM 15 A Yes.

11:01AM 16 Q And that particular picture is identical to the one that  
11:01AM 17 was admitted last week, right?

11:01AM 18 A Yes.

11:01AM 19 Q All right. If we keep going. Keep going.

11:01AM 20 All right. And then we see a 2001 Honda Accord,  
11:01AM 21 correct?

11:01AM 22 A Yes.

11:01AM 23 Q And it's identical to one that you gave testimony about  
11:01AM 24 last week, correct?

11:01AM 25 A Yes.

11:01AM 1 MR. KENNEDY: All right. If we keep going.

11:01AM 2 THE COURT: This is the last page?

11:01AM 3 MR. KENNEDY: There's no pages up here, so let's go

11:01AM 4 back to the first page.

11:01AM 5 BY MR. KENNEDY:

11:01AM 6 Q Now, in your phone, these are attachments and they have

11:01AM 7 PNG files, right?

11:01AM 8 A Yes.

11:01AM 9 Q And a PNG file, you can just click on and the image will

11:01AM 10 come up, right?

11:01AM 11 A Yes.

11:01AM 12 Q But to make it into paper, you have to print it out and

11:02AM 13 then attach it, right?

11:02AM 14 A Yes.

11:02AM 15 Q So in looking at this, do you see that the MM, if we blow

11:02AM 16 up the top part, this is the identical number for the Exhibits

11:02AM 17 636 and 637 that you gave testimony about, correct?

11:02AM 18 A Yes.

11:02AM 19 Q And so these particular cars that are shown in 1-643,

11:02AM 20 1-644, 1-646 and 1-647 are simply attachments in this instant

11:02AM 21 message between you and Mr. Miske, correct?

11:02AM 22 A I believe so.

11:02AM 23 Q Okay.

11:02AM 24 A I don't see my phone number with it.

11:02AM 25 Q That's because your phone isn't being shown.



11:02AM 1 If we can go back to Exhibit 01-0636 and let's go to

11:03AM 2 the second page.

11:03AM 3 Do you see it's the same phone number in the way that

11:03AM 4 it's presented, it's just not showing your phone? Do you see

11:03AM 5 that?

11:03AM 6 A Yes.

11:03AM 7 Q Okay. And so Exhibit 908-073 is simply an extraction from

11:03AM 8 your iPhone 6.

11:03AM 9 A Yes.

11:03AM 10 MR. KENNEDY: Okay. At this time, Your Honor, I would

11:03AM 11 move Exhibit 9008-073 as an extraction from Mr. Freitas's

11:03AM 12 iPhone 6.

11:03AM 13 THE COURT: Any objection?

11:03AM 14 MR. INCIONG: No objection.

11:03AM 15 MR. KENNEDY: Okay.

11:03AM 16 THE COURT: Without objection --

11:03AM 17 MR. KENNEDY: So now going back to --

11:03AM 18 THE COURT: Do you want this document admitted?

11:03AM 19 MR. KENNEDY: I would move to admit it.

11:03AM 20 THE COURT: So when they say no objection, if you  
11:03AM 21 would give me a minute, because this is about the fifth time  
11:04AM 22 you've done it.

11:04AM 23 MR. KENNEDY: That is on me, Your Honor, and I  
11:04AM 24 apologize.

11:04AM 25 THE COURT: All right. So without objection,

11:04AM 1 Exhibit 9008-073 is admitted and you may publish.

11:04AM 2 (Exhibit 9008-073 was received in evidence.)

11:04AM 3 BY MR. KENNEDY:

11:04AM 4 Q So if we can blow up the first page there on the first  
11:04AM 5 attachment, it gives an img\_0052.png message, right?

11:04AM 6 A Yes.

11:04AM 7 Q Now, if we move to the second page. And there are three  
11:04AM 8 more attachments, correct?

11:04AM 9 A Yes.

11:04AM 10 Q Okay. So what we have are six cars, right?

11:04AM 11 A Yes.

11:04AM 12 Q All right. And then I believe if we can pull that down?

11:04AM 13 What Mr. Miske says is, "Call each of these and set up  
11:05AM 14 viewings," right.

11:05AM 15 A Yes.

11:05AM 16 Q Okay. And that's the identical car that was in the  
11:05AM 17 Government Exhibit 1-643, right?

11:05AM 18 A Yes.

11:05AM 19 Q Okay. If we move through, the next message is, "For  
11:05AM 20 Delia, unless you like one of them, we will give the Acura to  
11:05AM 21 Delz."

11:05AM 22 Do you see that?

11:05AM 23 A Yes.

11:05AM 24 Q This is a message from Mike to you about the Acura that is  
11:05AM 25 one of the six vehicles there, correct?

11:05AM 1 A Yes.

11:05AM 2 Q And then if we go to the third page, if we blow up the

11:05AM 3 first two.

11:05AM 4 "Got to get at least 1 to 1,500 off asking price."

11:05AM 5 Do you see that?

11:05AM 6 A Yes.

11:05AM 7 Q And then copy, right?

11:05AM 8 A Yes.

11:05AM 9 Q So he's telling you, "Hey, view 'em, see if you can get

11:06AM 10 'em down by at least 1,000 or 1,500," right?

11:06AM 11 A Yes.

11:06AM 12 Q And we're referring to the ones that the government

11:06AM 13 admitted through you last week, right?

11:06AM 14 A Yes.

11:06AM 15 Q If we move to the green, you say, "Got it. Going to meet

11:06AM 16 them this afternoon," right?

11:06AM 17 A Yes.

11:06AM 18 Q Okay. Now, if we move to -- and this is back, as we said,

11:06AM 19 to buying these rather than selling them, right?

11:06AM 20 A Yes.

11:06AM 21 Q Okay. If we move to page 4, there is a seventh car shown

11:06AM 22 in the top attachment, right?

11:06AM 23 A Yes.

11:06AM 24 Q Okay. And then if we move to page 14, this is identical

11:06AM 25 to Government's Exhibit 1-644, right?

11:06AM 1 A Yes.

11:06AM 2 Q Okay. And that -- if we go back to page 4, if we blow up  
11:07AM 3 the second blue bubble.

11:07AM 4 This is, "Call this one and find out miles. Make them  
11:07AM 5 an offer," right?

11:07AM 6 A Yes.

11:07AM 7 Q So these are just what you're doing in terms of buying  
11:07AM 8 cars and Mr. Miske is communicating to you, right?

11:07AM 9 A Yes.

11:07AM 10 Q All right. If we go back to, then, page 4 of the second  
11:07AM 11 attachment, this is now the eighth car that he's looking at,  
11:07AM 12 right, and you are -- he is sending these to you so that you  
11:07AM 13 can view them, right?

11:07AM 14 A Yes.

11:07AM 15 Q Okay. And then if we go to page 15, that's the identical  
11:07AM 16 car with 1., looks like 646, right?

11:08AM 17 A Yes.

11:08AM 18 Q And so this is just a conversation about those things that  
11:08AM 19 were just introduced with the pictures of the cars last week,  
11:08AM 20 right?

11:08AM 21 A Yes.

11:08AM 22 Q All right. And so if we go back to page 4, the  
11:08AM 23 instructions with that one are "Buy this," right?

11:08AM 24 A Yes.

11:08AM 25 Q And then if we move to the last one, 1-647, if we go to

11:08AM 1 page 6 again. Do you see there's two more cars that are

11:08AM 2 listed, correct?

11:08AM 3 A Yes.

11:08AM 4 Q All right. And for this one you've already seen it,

11:08AM 5 right?

11:09AM 6 A This car?

11:09AM 7 Q Yeah.

11:09AM 8 A If I seen it?

11:09AM 9 Q Yeah. You've already taken a look at it, correct?

11:09AM 10 A No.

11:09AM 11 Q Okay. Because if we go to the next green message, it

11:09AM 12 says -- if we blow that up -- "The green Honda is a no. Inside

11:09AM 13 is dirty and brakes make noise," right?

11:09AM 14 A Yes.

11:09AM 15 Q So this is like we're going to stay away from this car,

11:09AM 16 right?

11:09AM 17 A Um-hm.

11:09AM 18 Q So once again this is just clearing up that this doesn't

11:09AM 19 have anything to do with Hawai'i Partners' Craigslist ads.

11:09AM 20 These are ads by other people that Hawai'i Partners is thinking

11:09AM 21 of buying cars, right?

11:09AM 22 A Yes.

11:09AM 23 Q Now, between about 2005 and 2010, are you aware that your

11:09AM 24 dad lived with Mike at Kuuna Street in Kailua?

11:09AM 25 A Yes.

11:09AM 1 Q They're close, right?

11:09AM 2 A Yes.

11:09AM 3 Q And you're his son, right?

11:10AM 4 A Yes.

11:10AM 5 Q And you're family, right?

11:10AM 6 A Yes.

11:10AM 7 Q And during that time he was going through a rough time and

11:10AM 8 Mike --

11:10AM 9 MR. INCIONG: Objection, beyond the scope.

11:10AM 10 THE COURT: Overruled. Go ahead.

11:10AM 11 BY MR. KENNEDY:

11:10AM 12 Q And Mike opened up his home and your dad was able to live

11:10AM 13 there during those years.

11:10AM 14 A Yes.

11:10AM 15 Q And that's what families do, right?

11:10AM 16 A Yes.

11:10AM 17 Q Now, in the discussion, you know, the agreement, the

11:10AM 18 proffer agreement, it talks about testify truthfully, right?

11:10AM 19 A Yes.

11:10AM 20 Q And you testified about to tell the truth, right?

11:10AM 21 A Yes.

11:10AM 22 Q And you understand that it's the government that decides

11:10AM 23 whether to make that cooperation motion for you, right?

11:10AM 24 A Correct.

11:10AM 25 Q That they wait until you've testified, right?

11:10AM 1 A Yes.

11:10AM 2 Q And they are the sole ones who decide whether you will be  
11:10AM 3 requested leniency for that reason, right?

11:10AM 4 A Yes.

11:10AM 5 Q But inside this courtroom, it's not the government that  
11:11AM 6 decides truth, is it?

11:11AM 7 A No.

11:11AM 8 Q It's not even the judge, correct?

11:11AM 9 A Yes.

11:11AM 10 Q It's the jury, right?

11:11AM 11 A Correct.

11:11AM 12 MR. KENNEDY: I've got nothing further, Your Honor.

11:11AM 13 THE COURT: Mr. Inciong, redirect?

11:11AM 14 MR. INCIONG: Thank you, Your Honor.

11:11AM 15 REDIRECT EXAMINATION

11:11AM 16 BY MR. INCIONG:

11:11AM 17 Q Good morning, Mr. Freitas.

11:11AM 18 A Good morning.

11:11AM 19 Q Whether you were buying or selling cars for Mr. Miske, was  
11:11AM 20 this all part of your duties as his personal assistant?

11:11AM 21 A Yes.

11:11AM 22 Q Did he direct you as to what cars to purchase?

11:11AM 23 A Yes.

11:11AM 24 Q Did he direct you as to how much to offer for them?

11:11AM 25 A Yes.

11:11AM 1 Q Did he direct you for certain things to look at for those  
11:11AM 2 cars?

11:11AM 3 A Yes.

11:11AM 4 Q When you were selling the cars, you sold those cars  
11:11AM 5 online, correct?

11:11AM 6 A Correct.

11:11AM 7 Q Who directed you to sell them online?

11:11AM 8 A Mike did.

11:11AM 9 Q Did Mr. Miske direct you as to what to say in those ads?

11:12AM 10 A Yes.

11:12AM 11 Q Did he direct you what pictures to take?

11:12AM 12 A Yes, certain angles of the vehicle.

11:12AM 13 MR. INCIONG: So on that point, if we could show

11:12AM 14 Mr. Freitas and the jury Exhibit 1-636, which has previously  
11:12AM 15 been admitted, Your Honor?

11:12AM 16 THE COURT: Yes. Go ahead.

11:12AM 17 Q If we could go to page 3 to begin with on the very bottom.  
11:12AM 18 Your Honor -- there we go. Thank you.

11:12AM 19 If we could look at the bottom bubble, the very last  
11:12AM 20 one. Do you recall seeing this text message when you testified  
11:12AM 21 earlier?

11:12AM 22 A Yes.

11:12AM 23 Q Is this an example of where Mr. Miske would direct you as  
11:12AM 24 to what pictures to take?

11:12AM 25 A Yes.



11:12AM 1 Q And how to post it?

11:12AM 2 A Yes.

11:12AM 3 Q So if we could look at page 4, then, of that same exhibit  
11:12AM 4 next, and starting at the top bubble.

11:13AM 5 Do you see that text Mr. Miske sent you, "Take a  
11:13AM 6 close-up of the window sticker so we can post that as an image  
11:13AM 7 on Craigslist"?

11:13AM 8 A Yes.

11:13AM 9 Q He was directing you as to what to do for this particular  
11:13AM 10 ad?

11:13AM 11 A Yes.

11:13AM 12 Q And the next text, "Post the jeep."

11:13AM 13 So was he directing you as to which car to put for  
11:13AM 14 sale?

11:13AM 15 A Yes.

11:13AM 16 Q And then the next text, "Tell me what verbiage you're  
11:13AM 17 going to write"?

11:13AM 18 A Yes.

11:13AM 19 Q So you had to run by what you were going to post as far as  
11:13AM 20 the language in the ad for his approval?

11:13AM 21 A Correct.

11:13AM 22 Q And then in the last text he says, "Put your number and  
11:13AM 23 email"?

11:13AM 24 A Yes.

11:13AM 25 Q You were the contact person when any interested buyer

11:13AM 1 would respond?

11:13AM 2 A Yes.

11:13AM 3 Q When you were selling the cars, were you directed as to  
11:13AM 4 whether to list them as private seller or as an auction car?

11:13AM 5 A The cars was registered in my name, so it would be a  
11:13AM 6 private seller.

11:13AM 7 Q Who directed you to do that?

11:13AM 8 A Mike did.

11:14AM 9 Q Now, you were asked a lot of questions about the cashing  
11:14AM 10 of the checks for the Rachel crew earlier today.

11:14AM 11 Do you recall that?

11:14AM 12 A Yes.

11:14AM 13 Q Now, Mr. Miske had given you some instructions about when  
11:14AM 14 you cashed, or made withdrawals or cashed checks at the bank,  
11:14AM 15 correct?

11:14AM 16 A Yes.

11:14AM 17 Q What was that direction?

11:14AM 18 A Not to exceed \$10,000.

11:14AM 19 Q Why did he explain, if he did, as to why you should avoid  
11:14AM 20 that particular limit?

11:14AM 21 MR. KENNEDY: Objection, speculation.

11:14AM 22 THE COURT: Overruled. Go ahead.

11:14AM 23 THE WITNESS: It would throw up red flags for the IRS.

11:14AM 24 BY MR. INCIONG:

11:14AM 25 Q He told you that?

11:14AM 1 A Yes.

11:14AM 2 Q So were you just following his instructions?

11:14AM 3 A Yes.

11:14AM 4 Q So you remember testifying about making similar cash  
11:14AM 5 payments to the construction workers at the Lumahai house?

11:14AM 6 A Yes.

11:14AM 7 Q They were not illegal immigrants or aliens who couldn't  
11:14AM 8 get off the boat, right?

11:14AM 9 A No.

11:14AM 10 Q They were workers doing the construction work at that  
11:15AM 11 particular house?

11:15AM 12 A Yes.

11:15AM 13 Q How often did you pay cash to them?

11:15AM 14 A Every week.

11:15AM 15 Q Was that every Friday?

11:15AM 16 A Every Friday.

11:15AM 17 Q Did you make those payments more frequently than you did  
11:15AM 18 to the Rachel crew?

11:15AM 19 A Yes.

11:15AM 20 Q Did you pay much more money in cash than you did to the  
11:15AM 21 Rachel crew?

11:15AM 22 A It was still in the \$10,000.

11:15AM 23 Q On each occasion I understand, but in total?

11:15AM 24 A Yes.

11:15AM 25 Q In total you paid much more to the construction workers

11:15AM 1 than you did to the Rachel crew?

11:15AM 2 A Besides the captain, yes.

11:15AM 3 Q You were asked earlier today about some of the messages

11:15AM 4 that we went through and we'll go through them in a minute here

11:15AM 5 for a different reason, but some of the messages you exchanged

11:15AM 6 were not on WhatsApp or Signal, messages with Mr. Miske,

11:15AM 7 correct?

11:15AM 8 A Yes.

11:15AM 9 Q When you first started working for Mr. Miske, you said it

11:16AM 10 was about 2015, right?

11:16AM 11 A Yes.

11:16AM 12 Q Was encryption such as Signal, WhatsApp used right away

11:16AM 13 when you started working with him at that time, or did that

11:16AM 14 come later?

11:16AM 15 A It came later.

11:16AM 16 Q Now, the Hawai'i Partners, that was the car business,

11:16AM 17 correct?

11:16AM 18 A Yes.

11:16AM 19 Q Do you recall when Mr. Kennedy asked you, so that was

11:16AM 20 really more of a hobby for Mr. Miske than a business?

11:16AM 21 A Yes.

11:16AM 22 Q What was your answer to that?

11:16AM 23 A He likes vehicles. He likes cars.

11:16AM 24 Q So some of the cars you lost money on, true?

11:16AM 25 A Yes.

11:16AM 1 Q Some of them you made money on, true?

11:16AM 2 A Yes.

11:16AM 3 Q Would you say it was hit or miss as to whether you would

11:16AM 4 make a profit on that?

11:16AM 5 A Yes.

11:16AM 6 Q But did the profit matter to Mr. Miske?

11:16AM 7 A Just depends. If we was in the hole with some money on

11:17AM 8 some vehicles, we would try to make it back on some of the

11:17AM 9 other vehicles.

11:17AM 10 Q Did it matter in the instance of the person who wouldn't

11:17AM 11 repay him the money that he asked you to assault at the Wendy's

11:17AM 12 restaurant?

11:17AM 13 A Yes.

11:17AM 14 Q So you were shown some -- a couple different proposals in

11:17AM 15 regard to the Mauna Kea hotel termite job earlier today.

11:17AM 16 Do you recall that?

11:17AM 17 A Yes.

11:17AM 18 Q The first one was from 2013, right?

11:17AM 19 A Yes.

11:17AM 20 Q Were you working even for Mr. Miske at that time?

11:17AM 21 A No.

11:17AM 22 Q Did you become aware of that later?

11:17AM 23 A That the bid was in, but it never went through.

11:17AM 24 Q So that bid was not accepted.

11:17AM 25 A No.

11:17AM 1 Q That job was not obtained in 2013, correct?

11:17AM 2 A No.

11:17AM 3 Q And then in 2018 you were shown a second bid, right?

11:17AM 4 A Yes.

11:17AM 5 Q Was that bid accepted?

11:17AM 6 A No.

11:17AM 7 Q So there was no contract obtained from the 2018 proposal.

11:17AM 8 A No.

11:17AM 9 Q So 2020 after you were involved, that bid was accepted?

11:18AM 10 A Yes.

11:18AM 11 Q Those proposals, in your experience working as a

11:18AM 12 salesperson, in particular for Kama'aina at the later part of

11:18AM 13 your time working there, they came with a warranty?

11:18AM 14 A For that job?

11:18AM 15 Q Yes.

11:18AM 16 A Yeah, it's a spot treatment warranty.

11:18AM 17 Q What does that mean exactly, a spot treatment warranty?

11:18AM 18 A If anything, if any sightings of termites or anything like

11:18AM 19 that, that we will come by and spot treat those areas.

11:18AM 20 Q That means you won't come and re-tent the entire property

11:18AM 21 again, right?

11:18AM 22 A No. The warranty --

11:18AM 23 Q The area that was affected?

11:18AM 24 A Yes. That's spot treatment.

11:18AM 25 Q How long did those warranties typically were they good

11:18AM 1 for?

11:18AM 2 A Five years.

11:18AM 3 Q So when you came on in 2020, did you recognize the name

11:18AM 4 Jason Okazaki?

11:18AM 5 A Yes. That was my contact.

11:18AM 6 Q You had dealt with Mr. Okazaki in some fashion?

11:19AM 7 A Yes.

11:19AM 8 Q What was the nature of your communications with

11:19AM 9 Mr. Okazaki?

11:19AM 10 A About fumigation at Beach Mauna Kea.

11:19AM 11 Q You indicated that you were present on at least one of the

11:19AM 12 trips that Mr. Miske took over to make a presentation of some

11:19AM 13 sort?

11:19AM 14 A Yes. I mentioned the whole facility. It was about 6

11:19AM 15 million cubes.

11:19AM 16 Q Did you make any other trips other than that one?

11:19AM 17 A No. I was kicked out of there by then. I was left out,

11:19AM 18 not kicked out.

11:19AM 19 Q So you indicated you were not paid any commission for that

11:19AM 20 job.

11:19AM 21 A No.

11:19AM 22 Q Were you paid anything at all?

11:19AM 23 A No.

11:19AM 24 Q When you were asked about whether Mr. Miske stopped going

11:19AM 25 to the club after March of 2016, the M Nightclub after Caleb

11:19AM 1 passed away, did you mean that literally, that he never ever  
11:19AM 2 had set foot in there again, or that he just went there much  
11:19AM 3 less?

11:19AM 4 A He went there much less. He was in and out. He was  
11:20AM 5 mostly not there.

11:20AM 6 Q So it wasn't a case where he never set foot in the club  
11:20AM 7 again, was it?

11:20AM 8 A No.

11:20AM 9 Q Did you have any knowledge as to the particulars of the  
11:20AM 10 change in ownership from Mr. Miske to Mr. Yokoyama?

11:20AM 11 A Yes.

11:20AM 12 Q What did you know about that?

11:20AM 13 A That Jason took over the nightclub.

11:20AM 14 Q Did you know that Jason had basically purchased the club  
11:20AM 15 over time?

11:20AM 16 A Yes.

11:20AM 17 Q He hadn't bought it with one lump sum amount of money.

11:20AM 18 A No.

11:20AM 19 Q Were you aware that Mr. Yokoyama was paying Mr. Miske  
11:20AM 20 weekly in cash to pay off that debt?

11:20AM 21 A Yes.

11:20AM 22 Q Just to clarify, so when you refer to it as the M  
11:20AM 23 Nightclub, even after it became the Encore, did you still in  
11:21AM 24 your mind, did you refer to it as the M?

11:21AM 25 A Yes.



11:21AM 1 Q Although it might have changed ownership, it might have  
11:21AM 2 been redecorated, was it still the M to you?

11:21AM 3 A To me, yes.

11:21AM 4 Q You were asked earlier today by Mr. Kennedy about your  
11:21AM 5 intentions when you dispersed the, what you believed to be tear  
11:21AM 6 gas at the District Nightclub.

11:21AM 7 Do you recall that?

11:21AM 8 A Yes.

11:21AM 9 Q And he asked you, it wasn't your intention to harm anyone.

11:21AM 10 A Yes.

11:21AM 11 Q Correct?

11:21AM 12 What did Mr. Miske tell you what that subject was --  
11:21AM 13 substance was?

11:21AM 14 A Tear gas.

11:21AM 15 Q So did you have any way to know one way or the other  
11:21AM 16 whether or not it was tear gas?

11:21AM 17 A No.

11:21AM 18 Q Did he tell you it was in fact a chemical called  
11:21AM 19 chloropicrin?

11:21AM 20 A No.

11:21AM 21 Q Did he tell you that chloropicrin can cause human death?

11:21AM 22 A No.

11:21AM 23 Q Did he tell you that chloropicrin, the warning is if  
11:21AM 24 you're exposed to it, you should seek medical attention  
11:21AM 25 immediately?

11:21AM 1 A No.

11:21AM 2 Q Do you have any doubt in your mind that you met Mr. Miske  
11:22AM 3 at the Encore, which you refer to as the M Nightclub, earlier  
11:22AM 4 that night when he asked you to drop the chemical?

11:22AM 5 A No.

11:22AM 6 Q Do you have any doubt that you went back to the nightclub  
11:22AM 7 the, M/Encore Nightclub, after to report back to him what you  
11:22AM 8 had done?

11:22AM 9 A No.

11:22AM 10 Q Was it at the M/Encore Nightclub where he told you to go  
11:22AM 11 back and take pictures to see what the effect of the dropping  
11:22AM 12 the chemical had been?

11:22AM 13 A Yes.

11:22AM 14 Q Now, you testified earlier that you had purchased what  
11:22AM 15 were called burner cell phones from Mr. Miske previously,  
11:22AM 16 correct?

11:22AM 17 A Yes.

11:22AM 18 Q Did you know him to carry more than one cell phone as  
11:22AM 19 well?

11:22AM 20 A Yes.

11:22AM 21 Q You were asked a lot of questions about cell towers and  
11:22AM 22 things of that nature. Sounds like you know something about  
11:22AM 23 that, right?

11:22AM 24 A Yes.

11:22AM 25 Q But to your knowledge, do you have to be actually carrying

11:22AM 1 a particular cell phone in order to be able to track that?

11:23AM 2 A No.

11:23AM 3 Q If I'm not -- if I have two cell phones, for example, I

11:23AM 4 leave one at home and I'm carrying the other one, the one at

11:23AM 5 home isn't going to give any information about my whereabouts

11:23AM 6 that day, is it?

11:23AM 7 A No.

11:23AM 8 Q So let me have you focus a minute on the robbery of Eric

11:23AM 9 Lum.

11:23AM 10 You testified, this was last week now, that Mr. Miske

11:23AM 11 was not happy when he found out about that, correct?

11:23AM 12 A No.

11:23AM 13 Q Do you recall we went over a number of text messages that

11:23AM 14 he had sent you after he had learned about that incident?

11:23AM 15 A Yes.

11:23AM 16 MR. INCIONG: Could we show Mr. Freitas and the jury

11:23AM 17 Exhibit 1-637, Your Honor, which has previously been admitted

11:23AM 18 into evidence?

11:23AM 19 THE COURT: Yes, you may.

11:23AM 20 MR. INCIONG: Could we go to page 24 specifically,

11:24AM 21 please, of that exhibit.

11:24AM 22 BY MR. INCIONG:

11:24AM 23 Q Do you see page 24 in front of you, Mr. Freitas?

11:24AM 24 A Yes.

11:24AM 25 Q So starting with the second bubble, the first blue bubble

11:24AM 1 on that page if you could -- thank you -- enlarge that.

11:24AM 2 Do you recall this is the first text message you got  
11:24AM 3 from Mr. Miske after he had learned about the robbery of Eric  
11:24AM 4 Lum?

11:24AM 5 A Yes.

11:24AM 6 Q Now, do you see the last sentence of that particular text  
11:24AM 7 message?

11:24AM 8 A Yes.

11:24AM 9 Q Does that read, "Although I want to personally slap you, I  
11:24AM 10 won't let anyone else"? What did that mean to you?

11:24AM 11 A That he wouldn't let nothing happen to me.

11:24AM 12 Q Meaning he was going to protect you, right?

11:25AM 13 A Yes.

11:25AM 14 Q Could we go to page 26 of that exhibit, please. If we  
11:25AM 15 could enlarge the first -- the top bubble.

11:25AM 16 Do you recall him sending you this message on  
11:25AM 17 August 29th of 2015 in regard to the Eric Lum robbery?

11:25AM 18 A Yes.

11:25AM 19 Q Do you see the last sentence of that particular bubble?

11:25AM 20 A Yes.

11:25AM 21 Q Does that read, "I going have to pay back your guys f'ing  
11:25AM 22 rip just because you affiliated with me," exclamation point  
11:25AM 23 times three.

11:25AM 24 Do you see that?

11:25AM 25 A Yes.

11:25AM 1 Q What do you believe Mr. Miske meant by saying "affiliated  
11:25AM 2 with me"?

11:25AM 3 MR. KENNEDY: Objection as speculation, Your Honor.

11:25AM 4 THE COURT: Overruled. Go ahead.

11:25AM 5 THE WITNESS: Just being part of being with Mike,  
11:26AM 6 being affiliated with Mike.

11:26AM 7 Q All right. Could we go to page 28 of that exhibit,  
11:26AM 8 please, and if we could enlarge the very last bubble, the  
11:26AM 9 bottom one on that page.

11:26AM 10 Do you see that text?

11:26AM 11 A Yes.

11:26AM 12 Q Was this another text he sent to you after the Eric Lum  
11:26AM 13 robbery had occurred?

11:26AM 14 A Yes.

11:26AM 15 Q Do you see the last part of that, the last full sentence  
11:26AM 16 starting with "Don't"?

11:26AM 17 A Yes.

11:26AM 18 Q Does that say, "Don't show your face around the f'ing  
11:26AM 19 club, both of you"?

11:26AM 20 A Yes.

11:26AM 21 Q What did you understand that to mean?

11:26AM 22 A Not to go to that nightclub.

11:26AM 23 Q Why would that matter to you?

11:26AM 24 A Because we used to go there and party.

11:26AM 25 Q You went there a lot, right?

11:26AM 1 A Yes.

11:26AM 2 Q Drank for free, ate for free, no cover charge, right?

11:27AM 3 A Yes.

11:27AM 4 Q When you were there, did people know who you were?

11:27AM 5 A Yes.

11:27AM 6 Q Did they know you were affiliated with Mike?

11:27AM 7 A Yes.

11:27AM 8 Q Did you feel like you were a big shot or a celebrity of

11:27AM 9 some sort almost?

11:27AM 10 A Not really like a celebrity, just the owner's cousin,

11:27AM 11 family of the nightclub.

11:27AM 12 Q Someone who was known.

11:27AM 13 A Yes.

11:27AM 14 Q If we could go to page 29 and the top bubble. If we could

11:27AM 15 enlarge that, please.

11:27AM 16 Do you see that, Mr. Freitas?

11:27AM 17 A Yes.

11:27AM 18 Q Was this another text message Mr. Miske sent to you after

11:27AM 19 the Lum robbery?

11:27AM 20 A Yes.

11:27AM 21 Q Do you see the second sentence there?

11:27AM 22 A Yes.

11:27AM 23 Q It says, "And you put me in and Miller in a bad spot

11:27AM 24 because you a dumb fuck."

11:27AM 25 A Yes.

11:27AM 1 Q What did you understand that to mean?

11:27AM 2 A That him and Miller was in a bad spot because of the  
11:27AM 3 robbery.

11:27AM 4 Q What does that mean, "in a bad spot"?

11:28AM 5 A In a bad position.

11:28AM 6 Q You also mentioned that after the Lum robbery, Mr. Miske  
11:28AM 7 told you that people came looking for you at the shop, right?

11:28AM 8 A Yes.

11:28AM 9 Q But nothing ever happened.

11:28AM 10 A No.

11:28AM 11 Q So from looking at those text messages, do you recall that  
11:28AM 12 happened in August of 2015?

11:28AM 13 A Yes.

11:28AM 14 Q We can take that down now for the moment. Thank you.

11:28AM 15 So then going forward, then, to the following year,  
11:28AM 16 May of 2016, you made the plan to rob Mike Char?

11:28AM 17 A Yes.

11:28AM 18 Q Correct?

11:28AM 19 So you did that despite all of the texts we saw that  
11:28AM 20 Mr. Miske had sent you after he found out about Eric Lum?

11:28AM 21 A Yes.

11:28AM 22 Q Why?

11:28AM 23 A There's no reason. I just did.

11:29AM 24 Q Were you afraid of any retaliation if you did the Mike  
11:29AM 25 Char robbery? Were you worried about that coming back to you

11:29AM 1 in any way?

11:29AM 2 A No.

11:29AM 3 Q Is that because nothing had happened to you from the Eric

11:29AM 4 Lum robbery?

11:29AM 5 A Yes.

11:29AM 6 Q Who protected you in the Eric Lum robbery?

11:29AM 7 A Mike did.

11:29AM 8 Q Did you expect him to protect you again if something

11:29AM 9 happened like that in the Mike Char robbery?

11:29AM 10 A Yes.

11:29AM 11 Q So did the fact that you did the Lum robbery and nothing

11:29AM 12 happened, you never even had to pay back the money, right?

11:29AM 13 A No.

11:29AM 14 Q So were you emboldened by Mr. Miske's protection of you

11:29AM 15 from that incident?

11:29AM 16 A I wouldn't say more.

11:29AM 17 Q Pardon me?

11:29AM 18 A I wouldn't say that exactly.

11:29AM 19 Q Well, what would you say?

11:29AM 20 A I just knew that Mike would always protect me.

11:29AM 21 Q Were you thinking about the meaning of that area, the bay,

11:29AM 22 to Mr. Miske when you planned to have that robbery there?

11:30AM 23 A No.

11:30AM 24 Q So after the Mike Char robbery, we know Mr. Miske destroys

11:30AM 25 your car, right?



11:30AM 1 A Yes.

11:30AM 2 Q Did he send you any of the texts or say anything to you  
11:30AM 3 like he did after the Eric Lum robbery?

11:30AM 4 A No.

11:30AM 5 Q Did he text you or tell you, I want to slap you, but I  
11:30AM 6 won't let anybody else do it?

11:30AM 7 A No.

11:30AM 8 Q Did he say, Now I'm going to have to pay Mike Char back  
11:30AM 9 because you're affiliated with me?

11:30AM 10 A No.

11:30AM 11 Q Did he tell you, You can't come around, you're banned from  
11:30AM 12 the M Nightclub?

11:30AM 13 A No.

11:30AM 14 Q So was it the fact that you robbed Mike Char or was it the  
11:30AM 15 fact of where you robbed Mike Char that made Mr. Miske so  
11:30AM 16 angry?

11:30AM 17 MR. KENNEDY: Objection, asked and answered, both on  
11:30AM 18 direct and --

11:30AM 19 THE COURT: Sustained.

11:31AM 20 BY MR. INCIONG:

11:31AM 21 Q Now, on direct exam you had indicated that you did not  
11:31AM 22 want to drop the tear gas at the District Nightclub, correct?

11:31AM 23 A Yes.

11:31AM 24 Q Do you recall saying that I -- me asking well, why did you  
11:31AM 25 do it then?

11:31AM 1 A Yes.

11:31AM 2 Q Remind us what your answer was.

11:31AM 3 A I didn't want to do it in the first place, but Mike made  
11:31AM 4 me do it.

11:31AM 5 Q Did you feel like you were obligated to him in some way?

11:31AM 6 A Yes.

11:31AM 7 Q Did you feel like there would be repercussions or  
11:31AM 8 consequences that you didn't want to happen if you didn't do  
11:31AM 9 it?

11:31AM 10 A Yes.

11:31AM 11 Q What were those?

11:31AM 12 A The privileges that I had.

11:31AM 13 Q So was it important to you to maintain your standing with  
11:31AM 14 Mr. Miske?

11:31AM 15 A Yes.

11:31AM 16 Q Now, you were asked a number of times by defense counsel  
11:32AM 17 that well, this is all about family, this is because you and  
11:32AM 18 Mr. Miske were family, it was family because you did this, it  
11:32AM 19 was family because Mr. Miske did that. I want to have you look  
11:32AM 20 again at Exhibit 1-637.

11:32AM 21 MR. INCIONG: If we could go back to that again and  
11:32AM 22 publish that, Your Honor.

11:32AM 23 THE COURT: Yes.

11:32AM 24 Q So back to page 26, if we could enlarge that top bubble  
11:32AM 25 again.

11:32AM 1 So can you show me where in that text Mr. Miske sent

11:32AM 2 to you he says anything about family, he mentions the word

11:32AM 3 "family"?

11:32AM 4 A No.

11:32AM 5 Q The word "family" is not in there, correct?

11:32AM 6 A No, it's not.

11:32AM 7 Q But as you indicated just a little bit ago, in the last

11:32AM 8 sentence it says, "...because you affiliated with me," correct?

11:33AM 9 A Yes.

11:33AM 10 Q Could we go to pages -- page 32, please, of that same

11:33AM 11 exhibit? Could we focus on the last two bubbles, please?

11:33AM 12 So do you recall what was happening here in these

11:33AM 13 texts that Mr. Miske sent you?

11:33AM 14 A Yes.

11:33AM 15 Q What was this about?

11:33AM 16 A Miller's son's birthday, Wayne Miller.

11:33AM 17 Q And Mr. Miske is telling you in the last text, "Don't

11:33AM 18 forget this," right?

11:33AM 19 A Yes.

11:33AM 20 Q If we could go to page 33. This is still on that same

11:33AM 21 subject, correct?

11:33AM 22 A Yes.

11:33AM 23 Q And he's telling you it's important, and then he gives you

11:33AM 24 the time, 11:30, and the place, Makaha?

11:33AM 25 A Yes.

11:33AM 1 Q Could we go to page 34?

11:34AM 2 It says, "Don't be late," on the top message, correct?

11:34AM 3 A Yes.

11:34AM 4 Q And then the last message, do you see that one?

11:34AM 5 A Yes.

11:34AM 6 Q So where in the last text does Mr. Miske say anything

11:34AM 7 about you being family?

11:34AM 8 A It doesn't.

11:34AM 9 Q It doesn't, right?

11:34AM 10 A No.

11:34AM 11 Q But how does he refer to you in that message?

11:34AM 12 A As us two idiots.

11:34AM 13 Q And after that he says, "You're going to lose every

11:34AM 14 privilege within my circle," correct?

11:34AM 15 A Yes.

11:34AM 16 Q Mr. Freitas, when you talk about family, is that how you

11:34AM 17 refer to family? Do you talk about people being affiliated

11:34AM 18 with you?

11:34AM 19 A No.

11:34AM 20 Q Do you say people being within my circle?

11:34AM 21 A No.

11:34AM 22 Q When they're family, you say family, right?

11:34AM 23 A Yes.

11:35AM 24 Q Now, on cross-examination, do you remember Mr. Kennedy

11:35AM 25 asking you about Mr. Miske being angry that you were committing

11:35AM 1 crimes? Do you recall that?

11:35AM 2 A Yes.

11:35AM 3 Q And you talked about the Mike Char and Eric Lum robberies?

11:35AM 4 A Yes.

11:35AM 5 Q You talked about, I believe there was one example about

11:35AM 6 you doing drugs or doing cocaine in the bathroom at the M

11:35AM 7 Nightclub?

11:35AM 8 A Yes.

11:35AM 9 Q So in regard to the Eric Lum and Mike Char robberies, did

11:35AM 10 Mr. Miske find out about those because the person who was

11:35AM 11 robbed complained to him, or somebody on their behalf

11:35AM 12 complained to him?

11:35AM 13 A Yes.

11:35AM 14 Q Is that how he got involved?

11:35AM 15 A Yes.

11:35AM 16 Q And then M Nightclub, that was his business, correct?

11:35AM 17 A Yes.

11:35AM 18 Q He was running it as a business?

11:35AM 19 A Correct.

11:35AM 20 Q So if the police or somebody found out that you or anybody

11:35AM 21 else was doing drugs in the bathroom there, that wouldn't be

11:36AM 22 good for business, would it?

11:36AM 23 A No.

11:36AM 24 Q But did he care about any of those things when he asked

11:36AM 25 you to drop the tear gas at the District Nightclub?

11:36AM 1 MR. KENNEDY: Objection on speculation.

11:36AM 2 THE COURT: Sustained.

11:36AM 3 THE WITNESS: No.

11:36AM 4 THE COURT: The objection was sustained. The last

11:36AM 5 answer from the witness shall be stricken and not considered by

11:36AM 6 the jury.

11:36AM 7 BY MR. INCIONG:

11:36AM 8 Q When Mr. Miske asked you to commit the assault at the

11:36AM 9 Wendy's, do you recall that?

11:36AM 10 A Yes.

11:36AM 11 Q Did he tell you, Make sure you don't get caught by police

11:36AM 12 or Make sure this doesn't show up on the surveillance camera?

11:36AM 13 A No.

11:36AM 14 Q When he was asking you to place the trackers on his

11:36AM 15 girlfriend's cars, did he warn you, don't get caught?

11:36AM 16 MR. KENNEDY: Objection, beyond the scope of cross.

11:37AM 17 THE COURT: Sustained.

11:37AM 18 BY MR. INCIONG:

11:37AM 19 Q Did Mr. Miske seem to have any problems when he was

11:37AM 20 directing you to commit crimes that would benefit him?

11:37AM 21 A No.

11:37AM 22 MR. KENNEDY: Objection to the form of the question.

11:37AM 23 THE COURT: Overruled.

11:37AM 24 BY MR. INCIONG:

11:37AM 25 Q You were asked about looking for boats for Mr. Miske to

11:37AM 1 purchase.

11:37AM 2 Do you recall that?

11:37AM 3 A Yes.

11:37AM 4 Q Did you or Mr. Miske ever actually go and look at any of  
11:37AM 5 those boats?

11:37AM 6 A Yes.

11:37AM 7 Q Was an offer ever made on any of those boats?

11:37AM 8 A I believe so.

11:37AM 9 Q But no boat was ever purchased?

11:37AM 10 A No.

11:37AM 11 Q I think you mentioned that when you were going to be paid,  
11:37AM 12 whether it was as Mr. Miske's personal assistant when you were  
11:38AM 13 being paid in cash weekly, or when you were working as a sales  
11:38AM 14 rep for Kama'aina Termite, that Mr. Miske determined how much  
11:38AM 15 you were going to be paid, correct?

11:38AM 16 A Yes.

11:38AM 17 Q Did you ever question how much he was paying you?

11:38AM 18 A No.

11:38AM 19 Q Why not?

11:38AM 20 A I was just thankful for a job and to learn his business.

11:38AM 21 Q So when you were not paid a commission for the Mauna Kea  
11:38AM 22 job, did you harbor any resentment towards Mr. Miske about  
11:38AM 23 that?

11:38AM 24 A No.

11:38AM 25 Q Did you have a vendetta against him about that?

11:38AM 1 A No.

11:38AM 2 Q Was your decision to cooperate and testify in this case,  
11:38AM 3 did that have anything to do with you not getting paid a  
11:38AM 4 commission by Mr. Miske?

11:38AM 5 A No.

11:38AM 6 Q You were asked a couple of questions about your plea  
11:39AM 7 agreement today and I want to go back to that.

11:39AM 8 You pled guilty to racketeering conspiracy, correct?

11:39AM 9 A Yes.

11:39AM 10 Q Do you recall what the elements or what the things that  
11:39AM 11 have to be present to make you guilty of that crime?

11:39AM 12 A Yes.

11:39AM 13 Q Do you recall that you have to have agreed with at least  
11:39AM 14 one other person to violate the racketeering laws?

11:39AM 15 A Yes.

11:39AM 16 Q Do you understand that you had to become a member of this  
11:39AM 17 enterprise or conspiracy, knowing of its goals and intending to  
11:39AM 18 help accomplish it?

11:39AM 19 A Yes.

11:39AM 20 Q Do you understand that at least one member of that  
11:39AM 21 conspiracy had to perform an act that was in furtherance of the  
11:39AM 22 conspiracy?

11:39AM 23 A Yes.

11:39AM 24 Q Did you understand that the agreement is the crime when it  
11:39AM 25 comes to conspiracy?



11:39AM 1 A Yes.

11:39AM 2 Q Did your attorney -- you've had multiple attorneys that  
11:39AM 3 have represented you in this case, correct?

11:39AM 4 A Correct.

11:39AM 5 Q But you've been represented by counsel throughout the  
11:40AM 6 entire stage of -- from the time you were charged up until the  
11:40AM 7 present day?

11:40AM 8 A Yes.

11:40AM 9 Q Did your attorneys explain to you that any coconspirator  
11:40AM 10 such as yourself is liable for the acts of other coconspirators  
11:40AM 11 that are performed in furtherance of the conspiracy?

11:40AM 12 MR. KENNEDY: Objection to the form of the question.  
11:40AM 13 The Court will instruct the jury at the end.

11:40AM 14 THE COURT: I'm sorry. I couldn't hear what you said.

11:40AM 15 MR. KENNEDY: I'm sorry, Your Honor. Objection to the  
11:40AM 16 form of the question. Legal question. The Court will give  
11:40AM 17 instructions at the end.

11:40AM 18 THE COURT: Overruled. Go ahead.

11:40AM 19 BY MR. INCIONG:

11:40AM 20 Q Let me repeat the question if I can, Mr. Freitas.

11:40AM 21 Did your attorney explain to you that any  
11:40AM 22 coconspirator like yourself is liable for other coconspirators'  
11:40AM 23 acts that are done in furtherance of this conspiracy as long as  
11:40AM 24 they're reasonably foreseeable?

11:40AM 25 A Yes.

11:40AM 1 MR. KENNEDY: Objection to the form of the question,

11:40AM 2 Your Honor.

11:40AM 3 THE COURT: Overruled again.

11:40AM 4 You may answer.

11:40AM 5 THE WITNESS: Yes.

11:40AM 6 BY MR. INCIONG:

11:40AM 7 Q And did your attorneys explain to you that that's true

11:40AM 8 even if you were not personally involved in that act that was

11:41AM 9 committed by the other coconspirator?

11:41AM 10 A Yes.

11:41AM 11 MR. KENNEDY: Once again, objection to the form of the

11:41AM 12 question, calls for a legal conclusion.

11:41AM 13 THE COURT: Overruled.

11:41AM 14 You may answer.

11:41AM 15 THE WITNESS: Yes.

11:41AM 16 BY MR. INCIONG:

11:41AM 17 Q Did you also understand that that holds true even if you

11:41AM 18 had no knowledge of that other act as long as it was reasonably

11:41AM 19 foreseeable?

11:41AM 20 A Yes.

11:41AM 21 MR. KENNEDY: Same objection.

11:41AM 22 THE COURT: That one is sustained.

11:41AM 23 BY MR. INCIONG:

11:41AM 24 Q So there was -- you were certainly doing legitimate work

11:41AM 25 for Mr. Miske at times, correct?

11:41AM 1 A Yes.

11:41AM 2 Q You were not committing crimes for him seven days a week,  
11:41AM 3 24 hours a day, right?

11:41AM 4 A No.

11:41AM 5 Q But you were committing crimes for him, right?

11:41AM 6 A Yes.

11:41AM 7 Q When I asked you about the Wendy's assault and I asked you  
11:41AM 8 is that how Mr. Miske did business, do you recall what your  
11:41AM 9 answer was?

11:41AM 10 MR. KENNEDY: Objection, beyond the scope of cross.

11:41AM 11 THE COURT: Sustained.

11:41AM 12 BY MR. INCIONG:

11:41AM 13 Q Was Mr. Miske a different person when he was upset?

11:42AM 14 MR. KENNEDY: Objection, vague.

11:42AM 15 THE COURT: Overruled.

11:42AM 16 Go ahead.

11:42AM 17 THE WITNESS: Yes.

11:42AM 18 BY MR. INCIONG:

11:42AM 19 Q Explain so. How so?

11:42AM 20 A When he's upset he doesn't really think everything  
11:42AM 21 through.

11:42AM 22 Q He doesn't think everything through? Is that what you  
11:42AM 23 said?

11:42AM 24 A Yes.

11:42AM 25 Q So Jake Smith and yourself, we saw those text messages

11:42AM 1 where you discussed drugs, oxycodone distribution, right?

11:42AM 2 A Yes.

11:42AM 3 Q Did you discuss also potential robberies with Jake Smith?

11:42AM 4 A Yes.

11:42AM 5 Q Did you ever actually rob anybody with Jake Smith?

11:42AM 6 A No.

11:42AM 7 Q What about Chad Duncan? Did you discuss robberies with  
11:42AM 8 Chad Duncan?

11:42AM 9 A Yes.

11:42AM 10 Q Did you rob anybody with Chad Duncan?

11:43AM 11 A One time.

11:43AM 12 Q What about John Stancil?

11:43AM 13 A Yes.

11:43AM 14 Q How many robberies did you do with John Stancil?

11:43AM 15 A Two.

11:43AM 16 Q Those were the Eric Lum and Mike Char?

11:43AM 17 A Yes.

11:43AM 18 Q Now, in your plea agreement there was a cooperation  
11:43AM 19 agreement, correct?

11:43AM 20 A Yes.

11:43AM 21 Q Did that require your full cooperation?

11:43AM 22 A Yes.

11:43AM 23 Q What did you understand full cooperation to mean?

11:43AM 24 A To tell the truth.

11:43AM 25 Q Did you understand that meant that you had to testify

11:43AM 1 truthfully at any trial or proceeding that the government asks

11:43AM 2 you to?

11:43AM 3 A Yes.

11:43AM 4 Q Did you understand that that meant you had to meet with

11:43AM 5 government agents at any time and give truthful information?

11:43AM 6 A Yes.

11:43AM 7 Q Did you understand that that cooperation provided that if

11:43AM 8 you did that and you provided substantial assistance, then the

11:43AM 9 government may make a motion for a reduced sentence?

11:43AM 10 A Yes.

11:43AM 11 Q Was that motion promised in any way?

11:44AM 12 A No.

11:44AM 13 Q Guaranteed in any way?

11:44AM 14 A No.

11:44AM 15 Q You recall the proffer agreement that you entered into,

11:44AM 16 right?

11:44AM 17 A Yes.

11:44AM 18 Q Did that also have a truthful component as well?

11:44AM 19 A Yes.

11:44AM 20 Q What was the number one requirement, as you understood, of

11:44AM 21 both your proffer agreement and the cooperation agreement in

11:44AM 22 your plea agreement?

11:44AM 23 A To tell the truth.

11:44AM 24 Q Have you told the truth to this jury over the last several

11:44AM 25 days?

11:44AM 1 A Yes.

11:44AM 2 Q Has anyone associated with the government told you to tell  
11:44AM 3 anything but the truth in this case?

11:44AM 4 A No.

11:44AM 5 Q Have you provided truthful information to the government  
11:44AM 6 since you began proffering in 2021?

11:44AM 7 A Yes.

11:44AM 8 Q At any time have you embellished or exaggerated the  
11:44AM 9 information that you provided to the government in order to  
11:44AM 10 help yourself?

11:44AM 11 A No.

11:44AM 12 Q Who in the end will decide whether you get a reduced  
11:44AM 13 sentence or not?

11:44AM 14 A The judge.

11:44AM 15 Q Is that what you're hoping for in this case?

11:44AM 16 A Yes.

11:44AM 17 Q What happens if you don't get a downward departure and  
11:45AM 18 don't get a reduced sentence?

11:45AM 19 A What was the question?

11:45AM 20 Q Do you have any recourse if you do not get a reduced  
11:45AM 21 sentence?

11:45AM 22 A No.

11:45AM 23 Q Can you withdraw from your plea agreement?

11:45AM 24 A No.

11:45AM 25 Q And on the other hand, if you are not truthful, would

11:45AM 1 there be consequences?

11:45AM 2 A Yes.

11:45AM 3 Q What would those be?

11:45AM 4 A It would be a void of the plea agreement and there would  
11:45AM 5 be more charges brought to me.

11:45AM 6 Q You could be facing the original charges that were agreed  
11:45AM 7 to be dismissed.

11:45AM 8 A Yes.

11:45AM 9 MR. INCIONG: Thank you, Your Honor. No further  
11:45AM 10 questions for Mr. Freitas.

11:45AM 11 THE COURT: Mr. Kennedy, anything further?

11:45AM 12 RECROSS-EXAMINATION

11:45AM 13 BY MR. KENNEDY:

11:45AM 14 Q Sir, your dad lived with Mike for five years?

11:46AM 15 A I'm sorry?

11:46AM 16 Q Your dad lived with Mike Miske for five years?

11:46AM 17 MR. INCIONG: Objection, beyond the scope.

11:46AM 18 THE COURT: Sustained.

11:46AM 19 BY MR. KENNEDY:

11:46AM 20 Q Let me ask you this: You knew you were family, right?

11:46AM 21 A Yes.

11:46AM 22 Q Nobody had to tell you in a text message, did they?

11:46AM 23 A No.

11:46AM 24 Q Nobody has to tell a family member they're family, they're  
11:46AM 25 just family, right?

11:46AM 1 A Yes.

11:46AM 2 Q And so when Pat from Waianae came to do harm to you and

11:46AM 3 that was somebody that Miller knew, that's what that text

11:46AM 4 message was about?

11:46AM 5 MR. INCIONG: Objection, states facts not in evidence.

11:46AM 6 THE COURT: Sustained.

11:46AM 7 BY MR. KENNEDY:

11:46AM 8 Q Did you know that that was Miller's friend?

11:46AM 9 A No.

11:46AM 10 Q And the text message was you had robbed someone, right?

11:46AM 11 A Yes.

11:46AM 12 Q It had cost them money, right? Right?

11:46AM 13 A Yes.

11:46AM 14 Q And Mike was saying because you had robbed someone who was

11:47AM 15 family of a friend, he would have to make what you did wrong

11:47AM 16 right?

11:47AM 17 MR. INCIONG: Objection, misstates the testimony and

11:47AM 18 the evidence.

11:47AM 19 THE COURT: Sustained.

11:47AM 20 BY MR. KENNEDY:

11:47AM 21 Q Didn't he say that he would now have to pay the debt?

11:47AM 22 A Yes.

11:47AM 23 Q Now, at Mauna Kea are you aware that you were asked some

11:47AM 24 questions about a warranty and spot treatment, right?

11:47AM 25 A Yes.



11:47AM 1 Q Were you aware that there was a tent fumigation involving  
11:47AM 2 tenting the entire property, running gas over a number of days?  
11:47AM 3 A Yes.  
11:47AM 4 Q And there were close to 50 mile an hour winds during that  
11:47AM 5 time?  
11:47AM 6 A Yeah. They didn't cover with the tent. They gas  
11:47AM 7 chambered it.  
11:47AM 8 Q So in addition to that job, they did a chamber seal from  
11:47AM 9 the inside and did it again, right?  
11:48AM 10 A Yes.  
11:48AM 11 Q And so they did two different jobs to make certain that  
11:48AM 12 they did it right, correct?  
11:48AM 13 A Correct.  
11:48AM 14 Q Now, with respect to one of the questions that you were  
11:48AM 15 asked at the end, you don't want to do any more time, do you?  
11:48AM 16 A No.  
11:48AM 17 Q Your kids depend on you.  
11:48AM 18 A Yes.  
11:48AM 19 Q And that's why you're here, right?  
11:48AM 20 A To testify truthfully, yes.  
11:48AM 21 Q And the jury will decide that, right?  
11:48AM 22 A Yes.  
11:48AM 23 Q Now, the government asked you some questions about if you  
11:48AM 24 leave your cell phone at home, right? Do you recall those  
11:48AM 25 questions?

11:48AM 1 A Yes.

11:48AM 2 Q Okay. So the cell phone is at home, right, and it's -- in  
11:48AM 3 this question it's pinging on places that are nearby, right?

11:48AM 4 A Yes.

11:48AM 5 Q Okay. It wouldn't be that situation if it shows movement,  
11:49AM 6 now would it?

11:49AM 7 A No.

11:49AM 8 Q The phone would be moving, right?

11:49AM 9 A Yes.

11:49AM 10 Q So if the phone shows movement into the city and movement  
11:49AM 11 back, it wouldn't be like when someone is at their home, right?

11:49AM 12 A Yes.

11:49AM 13 Q So if it shows leaving Hawaii Kai, going downtown before  
11:49AM 14 you're ever there, that would be movement, right?

11:49AM 15 A Yes.

11:49AM 16 Q And if it shows driving back to Hawaii Kai before you and  
11:49AM 17 Jake Smith ever get to town, that would be movement right?

11:49AM 18 MR. INCIONG: Objection facts not in evidence.

11:49AM 19 THE COURT: Overruled. Go ahead.

11:49AM 20 BY MR. KENNEDY:

11:49AM 21 Q Correct?

11:49AM 22 A Yes.

11:49AM 23 Q So the movement would show that the phone was not just  
11:49AM 24 sitting at home, wouldn't it?

11:49AM 25 A No.

11:49AM 1 Q And then if the phone shows movement around the windward  
11:49AM 2 side of the island, it wouldn't just be sitting at home, now  
11:49AM 3 would it?

11:49AM 4 A No.

11:49AM 5 MR. KENNEDY: Nothing further.

11:49AM 6 THE COURT: Mr. Freitas, you may step down. Thank  
11:49AM 7 you, sir.

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United  
3 States District Court, District of Hawaii, do hereby certify  
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,  
5 true, and correct transcript from the stenographically reported  
6 proceedings held in the above-entitled matter and that the  
7 transcript page format is in conformance with the regulations  
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, May 28, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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